(22,699.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 623.

BEN F. HARRISON, SECRETARY OF STATE OF THE STATE OF OKLAHOMA, APPELLANT,

vs.

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 12, 1911.

1 In the Circuit Court of the United States for the Western District of Oklahoma.

In Equity.

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY, a Corporation, Complainant,

vs.

BILL CROSS, Secretary of State of the State of Oklahoma, and LEO MEYER, Assistant Secretary of State and Acting Secretary of State of the State of Oklahoma, Defendants.

Amended Bill of Complaint.

To the Honorable Judges of the Circuit Court of the United States for the Western District of Oklahoma:

St. Louis and San Francisco Railroad Company, a corporation duly organized and existing under the laws of the State of Missouri, and a citizen and resident of said State, by leave of Court first duly had and obtained, brings this its amended bill of complaint against Bill Cross, Secretary of State of the State of Oklahoma, and Leo Meyer, Assistant Secretary of State and Acting Secretary of State of the State of Oklahoma, citizens and residents of the Western District of said State of Oklahoma and thereupon complains and avers:

I.

2 Your orator states that it is now and was at the time of the commencement of this suit, a corporation duly organized and existing under and by virtue of the laws of the State of Missouri, and a resident and citizen of said State, and that it was not at the time of the commencement of this suit, and is not now, a citizen or resident of the State of Oklahoma; that the defendants, Bill Cross and Leo Meyer were at the time of the commencement of this suit, and are now, citizens of the State of Oklahoma, and residents of the Western District thereof, and that neither of said defendants was at the time of the commencement of this suit, and is not now, a citizen or resident of the State of Missouri.

II.

Your orator further avers that the said defendant Bill Cross is now, and was at the time of the commencement of this suit, the duly elected, qualified and acting Secretary of State of the State of Oklahoma, and that the said defendant Leo Meyer was at the time of the commencement of this suit, and is now, the regularly appointed and qualified Assistant Secretary of the State of Oklahoma and at the time of the commission of the grievances herein stated was Acting Secretary of State of the State of Oklahoma.

III.

Your orator further avers that this suit is an action of a civil nature; that the matter in dispute herein exceeds, exclusive of interest and costs, the sum and value of Five Thousand Dollars ($5,000); and that the cause arises under the constitution and laws of the United States, as hereafter more particularly shown; and that the controversy herein is a controversy wholly between citizens of different states.

IV.

3 Your orator further avers that at the time of the commencement of this suit, and for several years prior thereto, it owned and operated, and now owns and operates, a system of railroad, extending into and through the States of Missouri, Kansas, Oklahoma, Arkansas, Tennessee, Mississippi and Alabama, and was, at all of said times, and now is, a common carrier thereon of freight and passengers and United States mails between points in each of said states, and through said States and each of them; that at all of said times it owned and operated, and now owns and operates as a part of its system of railroad, and used and operated in connection therewith, about Fifteen Hundred (1500) miles of railroad in the State of Oklahoma; that its lines of railroad in said State of Oklahoma were constructed as hereinafter stated, and acquired by your orator in the following manner:

(*a*) The line of railway extending from the eastern boundary of the State of Oklahoma, near Seneca, in the State of Missouri, in a southwesterly direction, to Sapulpa, in the State of Oklahoma, a distance of 112 miles, (the same being a part of the main line of your orator extending from the City of St. Louis, in the State of Missouri, southwesterly via Springfield, in said last named State, to a point on the Canadian River, in the State of Oklahoma, and thence to the north boundary line of the State of Texas,) was built and constructed by the Atlantic and Pacific Railroad Company under the authority of and in an accordance with the Act of Congress entitled: "An Act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Ocean," approved July 27, 1866, and the Acts amendatory thereof and supplemental thereto, to all of which acts your orator refers, and makes the same a part of this its amended bill.

4 By section 1 of said Act of July 27, 1866, the Atlantic and Pacific Railroad Company was authorized and empowered to lay out, locate and construct, furnish, maintain and enjoy a continuous railroad and telegraph line, with the appurtenances, beginning at or near the town of Springfield, in the State of Missouri, thence to the western boundary line of said State, and thence by the most eligible railroad route as shall be determined by said company to a point on the Canadian River, thence to the town of Albuquerque, on the River Del Norte, and thence by way of the Agua Frio, or other suitable pass, to the headwaters of the Colorado Shiquito, and thence along the thirty-fifth parallel of latitude, as

near as may be found most suitable for a railway route to the Colorado river, at such point as may be selected by said company for crossing, thence by the most practicable and eligible route to the Pacific.

It is provided by section 11 of said Act that said railroad should be a post route and military road, subject to the use of the United States for postal, military, naval and all other government service.

Section 12 of said Act was and is as follows:

"SEC. 12. And be it further enacted, That the acceptance of the terms, conditions and impositions of this act by the said Atlantic and Pacific Railroad Company shall be signified in writing under the corporate seal of said company, duly executed pursuant to the directions of its Board of Directors first had and obtained, which acceptance shall be made within two years after the passage of this act, and not afterwards, and shall be deposited in the office of the Secretary of the Interior."

And your orator further avers that said Atlantic and Pacific Railroad Company within two years after the passage of said Act of July 27, 1866, duly accepted the same, and the terms, conditions and impositions thereof, in writing, under its corporate seal, duly executed pursuant to the directions of its Board of Directors first had and obtained, which acceptance was duly deposited in the office of the Secretary of the Interior within the time specified in said Act and in accordance with the terms and provisions of said Act.

And your orator avers that the said Atlantic and Pacific Railroad Company, prior to the year 1871, and within the time required by said Act, duly constructed its railroad as in said Act required, from the town of Springfield, in the State of Missouri, thence to the western boundary line of said State of Missouri, and thence by the most eligible railroad route as determined by said Company, to a point on the Canadian River, which point is now in the State of Oklahoma, and that said Company duly performed and complied with, within the time and as in said Act of Congress required, all of the conditions and provisions of said Act on its part to be performed.

And your orator further avers and shows that by the passage and approval of said Act of Congress, and by the acceptance of and compliance with the same, and of the terms, conditions and impositions thereof by said Company, as aforesaid, and the construction of said railroad as aforesaid under and in accordance with the terms and conditions of said Act as aforesaid, there was made and constituted a valid and binding contract by and between the United States and said Atlantic and Pacific Railroad Company, and that said contract has been at all times since, and is now, valid and binding and in full force and effect.

That under and by virtue of the terms and conditions of said Act of Congress and of said contract the Atlantic and Pacific Railroad Company was granted and became possessed of the right to forever operate and maintain said railroad upon and along the line upon which the same was constructed under said Act of Congress as afore-

said, and to receive and transport passengers and freight and United States Mail to and from and between all points on said railroad, including all points thereon now situated in the State of Oklahoma, and to engage in and carry on the business of a common
6 carrier in the transportation of passengers and freight, both state and interstate, to and from all points on said railroad, and between all points thereon now in the State of Oklahoma.

And your orator further avers that by an Act of Congress entitled "An Act to enable the Atlantic and Pacific Railroad Company to mortgage its Road," approved April 20, 1871, (to all of which your orator refers and makes a part of this its amended bill,) the Atlantic and Pacific Railroad Company was duly authorized to make and issue its bonds, in such form and manner, for such sums, payable at such times, and bearing such rate of interest, and to dispose of them on such terms as its Directors might deem advisable; and to secure said bonds said Company was authorized to mortgage its road, equipment, land, franchises, privileges, and other rights and property, subject to such terms, conditions and limitations as its Directors might prescribe. That said Atlantic and Pacific Railroad Company, thereafter, under and in pursuance of the authority granted by said Act of Congress of April 20, 1871, duly executed and delivered its indenture of mortgage, bearing date March 1, 1882, to Central Trust Company of New York, for the use and benefit of the holders of the bonds of said Railroad Company duly executed by said Railroad Company under the authority of and in accordance with said Act of Congress of April 20, 1871, which mortgage conveyed and transferred unto said Central Trust Company of New York, among other things, the aforesaid line of railroad of your orator, together with all the franchises, rights and privileges granted by said Act of Congress of July 27, 1866, the same being more particularly described in said indenture of mortgage as follows:

The franchises, rights of way, railroad, telegraph, land, land grants, shops, depots, buildings, structures, bridges, viaducts,
7 rolling stock, tools, machinery, supplies, and all property of every description composing or pertaining to that part of the railroad and telegraph line of said Railroad Company beginning at the west line of the State of Missouri, at Seneca, and running thence by the most eligible railroad route to a point on the Rio Grande River, in the Territory of New Mexico, as the same had been or might thereafter be located or constructed; and also all additions and extensions which said Railroad Company had at any time made to said railroad and telegraph line and other property and things aforesaid, together with all the rents, tolls, issues, profits, income, privileges and appurtenances thereunto belonging or in any wise appertaining, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and in equity, of said Atlantic and Pacific Railroad Company, of, in and to the same and every part thereof, with the appurtenances.

That thereafter, and during the year 1897, in an action pending in the United States Court for the Northern District of the Indian Territory, in which the Central Trust Company of New York was

plaintiff, and the Atlantic and Pacific Railroad Company and The American Loan and Trust Company of Boston were defendants, the said indenture of mortgage, bearing date the 1st day of March, 1882, above referred to, was duly foreclosed, and a decree entered therein by said Court on November 13, 1897, ordering and directing that said railroad, together with all the rights, property, franchises, grants and privileges above described be sold to pay and satisfy the amount due upon the bonds of said Atlantic and Pacific Railroad Company; and, thereafter, under and in pursuance of the decree of said Court, as aforesaid, Monroe C. Crawford, the Special Master appointed by said Court, after giving due and legal notice as
8 required by law and by the terms of said decree, on the 18th day of December, 1897, duly sold the said railroad, franchises and property above described unto Edward C. Henderson, of the City, County and State of New York, in consideration of the sum of Two Million Two Hundred and fifty thousand dollars ($2,250,000); and that thereafter the said Monroe C. Crawford, Special Master, did after such sale and on or about the 18th day of December, 1897, make a report of such sale to the said United States Court for the Northern District of the Indian Territory, which report was duly filed in the office of the Clerk of said Court on said day;

That, thereafter, on said 18th day of December, 1897, an order was duly made by the said United States Court for the Northern District of Indian Territory confirming said sale, and directing and ordering the said Monroe C. Crawford, Special Master, to convey said railroad, franchises and property by deed to the said Edward C. Henderson;

That, thereafter, on the said 18th day of December, 1897, the said Monroe C. Crawford, Special Master, under and in pursuance of the order of said Court duly transferred and conveyed by deed unto the said Edward C. Henderson, for the consideration aforesaid, the said railroad, franchises and property above referred to, the same being all and singular the said railroad, franchises and property of said Atlantic and Pacific Railroad Company more particularly described in said deed as follows:

The franchises, rights of way, railroad, telegraph, lands, land grants, shops, depots, buildings, structures, bridges, viaducts, rolling stock, tools, machinery, supplies, and all property of every description on March 1, 1882, the date of said indenture of mortgage of said Atlantic and Pacific Railroad Company, or at any time
9 thereafter composing or pertaining to that part of the railroad and telegraph line of said Railroad Company, beginning at the west line of the State of Missouri, at Seneca, and running thence by the most eligible railroad route to a point on the Canadian River, and thence to the town of Albuquerque, on the Rio Grande River, in the Territory of New Mexico, as the same then was, or might thereafter be located or constructed; and also all additions and extensions which said Railroad Company had at any time made to said railroad and telegraph and the other property and things aforesaid, together with all the rents, tolls, issues, profits, income, privileges, and appurtenances thereunto belonging, or in anywise

appertaining, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and in equity, of said Atlantic and Pacific Railroad Company, of, in and to the same and any and every part thereof, with the appurtenances;

That, thereafter, the said Atlantic and Pacific Railroad Company, on the said 18th day of December, 1897, pursuant to said decree, and to the order of said United States Court for the Northern District of Indian Territory, confirming the said sale, did by its deed bearing * * * even date with the deed of said Monroe C. Crawford, Special Master, above referred to, grant, convey, assign, transfer and release unto the said Edward C. Henderson, the said purchaser, all and singular the railroad and property, real, personal and otherwise, described and embraced in said deed of said Monroe C. Crawford, Special Master, as aforesaid;

That, thereafter, by their respective deeds bearing even date with the said deed of said Monroe C. Crawford, Special Master, the said Central Trust Company of New York, as Trustee under said
10 indenture of mortgage of said Atlantic and Pacific Railroad Company, bearing date March 1, 1882, and said The American Loan and Trust Company of Boston, as aforesaid, did, severally, pursuant to the terms in said decree and in said order of confirmation contained, release unto the said Edward C. Henderson all and singular the right, title and interest of the respective grantors in and to the said * * * railroad, franchises and property conveyed by said Monroe C. Crawford, Special Master, to said Edward C. Henderson;

That thereafter, on the 18th day of December, 1897, the said Edward C. Henderson, of the City, County and State of New York, and Helen Iselin Henderson, his wife, duly granted, sold, assigned, transferred and conveyed unto your orator the said railroad franchises and property conveyed by said deed of Monroe C. Crawford, Special Master, to the said Edward C. Henderson, the same being more particularly described in the deed of the said Edward C. Henderson and Helen Iselin Henderson, his wife, as follows:

The line of railroad, formerly of the Atlantic and Pacific Railroad Company, beginning at Seneca, at the boundary line between the State of Missouri and the Indian Territory, and extending thence, in a general southwesterly direction, through said Indian Territory, to Sapulpa, in said Indian Territory; all telegraph lines upon or along said line of railroad; all rights of way, station, depot and terminal grounds, all station houses, depots, warehouses, engine house, freight houses, car houses, water stations, water tanks, machine shops, office buildings and other structures, and all tunnels, bridges, viaducts, superstructures, roadways, sidings, turnouts, switches and turntables, appurtenant to said line of railroad; all stringers, ties, rails and frogs, chairs, bolts and splices, all furniture, tools and implements and all materials and supplies pertaining to said railroad: Together with all and singular the tenements,
11 hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and, also,

all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of, in and to the above described premises and property, and every part and parcel thereof with the appurtenances: And also all franchises possessed by the Atlantic and Pacific Railroad Company for the construction, operation and maintenance of said line of railroad extending from Seneca to Sapulpa.

And your orator further avers that it is now the absolute and unqualified owner of all the said railroad, franchises and property above described, and that it has become and is, by virtue of the said proceedings and conveyance above referred to and of said Acts of Congress the successor to all the rights, privileges and franchises of the said Atlantic and Pacific Railroad Company and has continuously since the said 18th day of December, 1897, operated and maintained, and now operates and maintains, said line of railroad under and by virtue of said Acts of Congress.

Your orator avers that by the proceedings and conveyances aforesaid and by the said Acts of Congress there was made and constituted a valid and binding contract by and between the United States and your orator, and that said contract has been at all times since, and is now, valid and binding and in full force and effect; and that under and by virtue of the terms and conditions of said Acts of Congress and of said contract, your orator became possessed of and now owns the right to forever operate and maintain said railroad upon and along the line upon which the same was constructed under said Acts of Congress as aforesaid, and to receive and transport passengers and freight and United States mail
12 thereon to and from and between points on said railroad, including all points thereon now situated in the State of Oklahoma, and to engage in and carry on the business of a common carrier in the transportation of passengers and freight, both state and interstate, to and from all points on said railroad, and between all points thereon now situated in the State of Oklahoma.

(*b.*) A line of railway extending from the city of Sapulpa in the said state of Oklahoma in a southerly direction to the southern boundary line of said state at or near a point on Red River, near the city of Denison, Texas, which said line of railway forms a part of your orator's continuous interstate line of railway, which said line of railway was built and constructed by the St. Louis, Oklahoma and Southern Railway Company, a corporation duly organized under the laws of the territory of Oklahoma, under and by virtue of the authority conferred upon it by an act of Congress entitled "An Act Authorizing the St. Louis, Oklahoma and Southern Railway Company to Construct and Operate a Railway through the Indian Territory and Oklahoma Territory, and for other purposes," which became a law March 30, 1896, and acts amendatory thereof and supplemental thereto, to all which your orator refers and makes the same a part of this its amended bill.

That by said Acts said St. Louis, Oklahoma and Southern Railway Company was authorized, invested and empowered with the right of locating, constructing, owning, equipping, operating, using

and maintaining a railway through the Indian Territory and Oklahoma Territory, beginning at a point to be selected by said Railway Company and between Claremore and Sapulpa on the St. Louis and San Francisco Railroad, in the Cherokee and Creek Nations in said Indian Territory, and ruinning thence in a westerly and southerly direction over the most practicable and feasible
13 route through or near the Cherokee, Creek, Seminole and Chickasaw Nations in said Indian Territory, to a point at or near Stonewall to a point on the Red River at or near Willis, Indian Territory.

That in and by said Acts Congress expressly reserved the right to regulate the charges for freight and passengers on said railway until state government or governments should exist in said Territories within the limits of which said railway or a part thereof should be located, and further expressly reserved the right to fix and regulate at all times the cost of such transportation by said Railway or said Company whenever such transportation shall extend from one state into another state, or shall extend into more than one state, with the right to at any time amend, add to or alter said Acts; and it was further provided by said Acts that said Railroad Company should carry the United States mail at such prices as Congress may by law provide, and until such rate should be fixed by law the Post Master General should fix the rate of compensation therefor.

That said St. Louis, Oklahoma and Southern Railway Company duly accepted the terms and conditions of said Acts and constructed said line of railroad as provided therein, being the line of railroad hereinabove in this sub-division (b) particularly described, and duly entered into the use, enjoyment, operation and maintenance of the same.

That thereafter, to-wit: on or about the 22nd day of June, 1901, and while said St. Louis, Oklahoma and Southern Railway Company was in the full use, enjoyment, ownership and operation of said line of railway, it, the said St. Louis, Oklahoma and Southern Railway Company, by good and sufficient deed, containing proper words of conveyance, duly executed, acknowledged and delivered, Granted, Sold, Assigned, Transferred and conveyed unto your Orator the said railroad, together with all the franchises,
14 rights and privileges owned or enjoyed by said grantor appertaining or appurtenant thereto, together with all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and in equity, of it, the said St. Louis, Oklahoma and Southern Railway Company, of, in and to the same, and every part thereof, with the appurtenances.

And your Orator avers that it is now the absolute and unqualified owner of all the said railroad, franchises and property above mentioned, and that it has become and is, by virtue of the said conveyance above referred to and by said Acts of Congress, the successor to all the rights, privileges and franchises of said St. Louis, Oklahoma and Southern Railway Company, and has continuously since the 22nd day of June, 1901, operated and maintained, and now operates and maintains said railroad, under and by virtue of

said Acts of Congress and of said laws of the Territory of Oklahoma, as a part of its interstate system of railways.

Your Orator avers that by the conveyance, laws of the Territory of Oklahoma and Acts of Congress aforesaid, there were made and constituted valid and binding contracts by and between the United States and your Orator, and by and between the Territory of Oklahoma and your Orator, and that said contracts have been at all times since, and are now, valid and binding and in full force and effect; that under and by virtue of the terms and conditions of said Acts of Congress and of said contracts your Orator became possessed of and now owns the right to forever operate and maintain said railroad upon and along the line upon which the same was constructed under said Acts of Congress, as aforesaid, and to receive and transport passengers and freight and United States Mail thereon to and from and between points on said Railroad,' and to engage in and carry on the business of a common carrier in the transportation of passengers and freight to and from and between all points thereon.

(c) A line of railway extending from the city of Sapulpa, in said state of Oklahoma, to the city of Oklahoma City in said State, which said line of railway forms a part of your Orator's continuous interstate line of railway, the same having been built and constructed by St. Louis and Oklahoma City Railroad Company, a corporation created under and by virtue of the laws of Oklahoma Territory, under and by virtue of the authority conferred upon said St. Louis and Oklahoma City Railroad Company by an Act of Congress entitled "An Act to authorize the St. Louis and Oklahoma City Railroad Company to construct and operate a railway through the Indian and Oklahoma Territories, and for other purposes," which became a law March 18, 1896, to which Act your Orator refers and makes the same a part of this its amended bill; that in and by said Act said St. Louis and Oklahoma City Railroad Company was vested and empowered with the right of locating, constructing, owning, equipping, operating, using and maintaining a railway through the Indian Territory, beginning at a point to be selected by said St. Louis and Oklahoma City Railroad Company at or near Sapulpa in the Indian Territory and running through said Territory and the Territory of Oklahoma by way of the cities of Chandler and Oklahoma City to a point on Red River at or near the west line of the Kiowa and Comanche Reservations.

That in and by said Act Congress expressly reserved the right to regulate the charges for freight and passengers on said railway until state government or governments should exist in said territories within the limits of which said railway, or a part thereof, should be located, and further expressly reserved the right to fix and regulate, at all times, the cost of such transportation by said railway or said Company whenever such transportation shall extend from one state into another state, or shall extend into more than one state, with the right at any time to amend, add to or alter said Act; and it was further provided by said Act that said Railway Company should carry the United States mail at such prices as Congress may by law provide, and until such rate

should be fixed by law the Post Master General should fix the rate of compensation therefor.

That said St. Louis and Oklahoma City Railroad Company duly accepted the terms and conditions of said Act, and constructed said line of railroad as provided therein, being the line of railroad hereinbefore in this sub-division (*c*) particularly described, and duly entered into the use, enjoyment, operation and maintenance of the same.

That thereafter, to-wit: on or about the 28th day of March, A. D. 1899, and while said St. Louis and Oklahoma City Railroad Company was in the full use, enjoyment, ownership and operation of said line of railway, it, the said St. Louis and Oklahoma City Railroad Company, by a good and sufficient deed, containing proper words of conveyance, duly executed, acknowledged and delivered, granted, sold, assigned, transferred and conveyed unto your Orator the said railroad, together with all the franchises, rights and privileges owned or enjoyed by said Grantor appertaining or appurtenant thereto, together with all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and in equity, of it, the said St. Louis and Oklahoma City Railroad Company, of, in and to the same and every part thereof, with the appurtenances.

And your Orator avers that it is now the absolute and unqualified owner of all the said railroad, franchises and property above mentioned, and that it has become and is by virtue of said
17 conveyances above referred to, and by said Act of Congress, the successor to all the rights, privileges and franchises of said St. Louis and Oklahoma City Railroad Company, and has continuously since the said 28th day of March, 1899, operated and maintained, and now operates and maintains, said railroad, under and by virtue of said Act of Congress and said laws of the Territory of Oklahoma, as a part of its interstate system of railways.

And your Orator avers that by the conveyance, laws of the Territory of Oklahoma and Act of Congress aforesaid, there were made and constituted valid and binding contracts by and between the United States and your Orator, and by and between the Territory of Oklahoma and your Orator, and that said contracts have been at all times since, and are now, valid and binding and in full force and effect; that under and by virtue of the terms and conditions of said Act of Congress, and of said contracts, your Orator became possessed of, and now owns, the right to forever operate and maintain said railroad upon and along the line upon which the same was constructed under said Act of Congress as aforesaid, and to receive and transport passengers and freight and United States mail thereon to and from and between points on said railroad, and to engage in and carry on the business of a common carrier in the transportation of passengers and freight to and from and between all points on said railroad.

(*d*) A line of railway extending from the city of Oklahoma City, in the said state of Oklahoma, to a point on the southwestern boundary of said state near Quanah, Texas, which said line of railway forms a part of your Orator's continuous interstate line of railway,

and which said line of railway was built and constructed by the Oklahoma City and Western Railroad Company, a corporation organized under the laws of the territory of Oklahoma in 1899, under the authority of the laws then in force in said Territory,
18 and that portion of said line of railway crossing Indian lands and the Indian Territory was constructed pursuant to the authority of an Act of Congress of March 2, 1899, entitled "An Act to provide for the acquiring of rights of way by railroad companies through Indian Reservations, Indian Lands and Indian Allotments, and for other purposes," to which Act your Orator refers and makes the same a part of this its amended bill.

That said The Oklahoma City and Western Railroad Company duly accepted and complied with the terms and conditions of said Act and constructed said line of railroad as provided therein, and as provided by said laws of the Territory of Oklahoma, and as it was duly authorized under its charter, being the line of railroad hereinbefore in this sub-division (*d*) particularly described, and duly entered into the use, enjoyment, operation and maintenance of the same.

That thereafter, to-wit: on or about the 18th day of July, 1907, by virtue of an Act of the Legislature of the Territory of Oklahoma of February 20, 1901, entitled "An Act to amend an Act entitled 'An Act to authorize Railroad Companies to sell and Lease Their Railroads, Property and Franchises,' approved February 24, 1899," p. 86 Laws 1901, and while the said The Oklahoma City and Western Railroad Company was in the full use, enjoyment, ownership and operation of said line of railway, it, the said The Oklahoma City and Western Railroad Company, by a good and sufficient deed, containing proper words of conveyance, duly executed, acknowledged and delivered, granted, sold, assigned, transferred and conveyed unto your Orator the said railroad, together with all the franchises, rights and privileges then or thereafter owned or enjoyed by said Grantor appertaining or appurtenant thereto, together with all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and in equity, by it, the
19 said The Oklahoma City and Western Railroad Company, of, in and to the same, and every part thereof, with the appurtenances.

And your Orator avers that it is now the absolute and unqualified owner of all the said railroad, franchises and property above mentioned *mentioned*, and that it has become, and is by virtue of veyance above referred to and by said Act of Congress, the successor to all the rights, privileges and franchises of the said The Oklahoma City and Western Railroad Company, and has continuously since the said 18th day of July, 1907, operated and maintained, and now operates and maintains, said railroad under and by virtue of said Acts of Congress and of said Act of the Legislature of the Territory of Oklahoma aforesaid, as a part of its interstate system of railways.

Your Orator avers that by the conveyance and Act of Congress aforesaid, and the said Act of the Legislature of the Territory of

Oklahoma, there was made and constituted a valid and binding contract by and between the United States and your Orator, and by and between said Territory of Oklahoma and your Orator, and that said contracts, and each of them, have been at all times since, and are now, valid and binding and in full force and effect; that under and by virtue of the terms and conditions of said Act of Congress, and of said Act of the Legislature of the Territory of Oklahoma, and of said contract, your Orator became possessed of and now owns the right to forever operate and maintain said railroad upon and along the line upon which the same was constructed under said Act of Congress, and said Act of the Legislature of the Territory of Oklahoma as aforesaid, and to receive and transport passengers and freight and United States mail thereon to and from and between points on said railroad, and to engage in and carry on the business of a common carrier in the transportation of passengers and freight to and from and between points thereon.

20 (*e*) A line of railway extending from a point near the City of Tulsa, State of Oklahoma, through the City of Enid, to the City of Avard, in said State, which said line of railway forms a part of your Orator's continuous interstate line of Railway, and which said line of railway was built and constructed by The Arkansas Valley and Western Railway Company, a corporation duly organized under the laws of the Territory of Oklahoma on January 29, 1902, under and pursuant to the authority granted to it by the said Territory of Oklahoma, and under and by virtue of the authority of an Act of Congress of February 28, 1902, entitled "An act to grant a right of way through the Oklahoma Territory and the Indian Territory to the Enid and Anadarko Railroad Company, and for other purposes," the said Act being commonly known as the "Enid and Anadarko Act," to all of which your Orator refers and makes the same a part of this its amended bill.

That by said Enid and Anadarko Act the right to locate, construct, own, equip, operate, use and maintain a railway in or through the Indian Territory and in or through any lands held by any Indian tribe or nation, person, individual or municipality of said Territory, and in or through any lands in said Territory which had been or should thereafter be allotted to any individual, Indian or other person under any law or treaty, with full power of alienation, was granted to any railway company organized under the laws of the United States, or of any state or territory, which should comply with said Act.

That in and by said Act Congress expressly reserved the right to regulate the charges for freight and passengers on any and all railroad constructed under the provisions of said Act until state government or governments should exist in said Territory within the limits of which any such railway should be located; and further expressly reserved the right to fix and regulate, at all times, the cost of such transportation of each and every of such

21 railways whenever such transportation should extend from one state into another, or should extend into more than one state, with the right to alter, amend or repeal said Act or any por-

tion thereof; and it was further provided that each and every of such railway companies should carry the United States mail at such prices as Congress should by law provide, and that until such rate should be fixed by law the Postmaster General should fix the same.

The said The Arkansas Valley and Western Railway Company duly accepted and complied with all the terms and conditions of the laws of the Territory of Oklahoma and of said Enid and Anadarko Act; that that portion of said railway in the Indian Territory was constructed under and by virtue of and in accordance with the provisions of said Enid and Anadarko Act, and the remaining portion of its said line was constructed under and by virtue of and in accordance with the said laws of the Territory of Oklahoma, and that the same is the said line of railroad hereinabove in this sub-division (*e*) particularly described; that said The Arkansas Valley and Western Railway Company upon the completion of said railroad duly entered into the use, enjoyment, operation and maintenance of the same.

That thereafter, to-wit: on the 19th day of July, 1907, and while said The Arkansas Valley and Western Railway Company was in the full use, enjoyment, ownership and operation of said line of railway, it, the said The Arkansas Valley and Western Railway Company, by good and sufficient deed, containing proper words of conveyance, duly executed, acknowledged and delivered,, granted, sold, assigned, transferred and conveyed unto your Orator the said railroad, together with all the franchises, rights and privileges owned or enjoyed by said grantor appertaining or appurtenant thereto, together with all the estate, right, title, interest, property, pos-
22 session, claim and demand whatsoever, both in law and in equity, of it, the said The Arkansas Valley and Western Railway Company, of, in and to the same, and every part thereof, with the appurtenances, which said conveyance was entered into pursuant to the authority granted to the said The Arkansas Valley and Western Railway Company by the said laws of the Territory of Oklahoma, and by virtue of an Act of Congress approved April 27, 1904, entitled "An Act permitting the Ozark and Cherokee Central Railroad Company and The Arkansas Valley and Western Railway Company, and each or either of them, to sell and convey their railroads and other property in the Indian Territory to the St. Louis and San Francisco Railroad Company or to The Chicago Rock Island and Pacific Railway Company, and for other purposes."

And your Orator avers that it is now the absolute and unqualified owner of all the said railroad, franchises and property above mentioned, and that it has become and is, by virtue of the said conveyance above referred to and by said Acts of Congress and said laws of the Territory of Oklahoma, the successor to all the rights, privileges and franchises of said The Arkansas Valley and Western Railway Company, and has continuously since the said 19th day of July, 1907, operated and maintained, and now operates and maintains said railroad under and by virtue of the conveyance, Acts of Congress and laws of the Territory of Oklahoma aforesaid, as a part of its interstate system of railways.

Your Orator avers that by the conveyance, Acts of Congress and laws of the Territory of Oklahoma, aforesaid, there were made and constituted valid and binding contracts by and between the United States and your Orator, and by and between the Territory of Oklahoma and your Orator, and that said contracts have been at
23 all times since, and are now, valid and binding and in full force and effect; and that thereafter your Orator became possessed of, and now owns, the right to forever operate and maintain said railroad upon and along the line upon which the same was constructed, as aforesaid, and to receive and transport passengers and freight and United States mail thereon to and from and between points on said railroad, and to engage in and carry on the business of a common carrier in the transportation of passengers and freight to and from and between all points thereon.

(*f*) A line of railway between the city of Blackwell, Oklahoma, and the southern boundary line of the said state near Vernon, Texas, which said line of railway forms a part of your Orator's continuous interstate line of railway, and which said line of railway was built and constructed by the Blackwell, Enid and Southwestern Railway Company, a corporation organized under the laws of the Territory of Oklahoma in March, 1900; that that portion of said line of railway crossing Indian allotments was constructed under and by virtue of the provisions of an Act of Congress, approved March 2, 1899, entitled "An Act to provide for the acquiring of rights of way by railroad companies through Indian Reservations, Indian Lands and Indian Allotments, and for other purposes," and that the remaining portion of said line of railway was constructed under and by virtue of the laws of the Territory of Oklahoma.

That the said Act of Congress, approved March 2, 1899, as aforesaid, provided that the grants therein made were upon condition that the railroad companies constructing lines of railway under the provisions of said Act should transport United States mail whenever required to do so by the Post Office Department; that said Blackwell, Enid and Southwestern Railway Company duly complied with all the terms and conditions of said Act of Congress, and of said laws of the Territory of Oklahoma, and constructed
24 said line of railway as provided therein, being the line of railway hereinabove in this sub-division (*f*) particularly described, and said Blackwell, Enid and Southwestern Railway Company duly entered into the use, enjoyment, operation and maintenance of said line of railway.

That thereafter, to-wit: on or about the 20th day of July, 1907, and while said Blackwell, Enid and Southwestern Railway Company was in the full use, enjoyment, ownership and operation of said line of railway, it, the said Blackwell, Enid and Southwestern Railway Company, by good and sufficient deed, containing proper words of conveyance, duly executed, acknowledged and delivered, granted, sold, assigned, transferred and conveyed unto your Orator the said railroad, together with all the franchises, rights and privileges owned or enjoyed by said grantor appertaining or appurtenant thereto, together with all the estate, right, title, interest, prop-

erty, possession, claim and demand whatsoever, both in law and in equity, of it, said Blackwell, Enid and Southwestern Railway Company, of, in and to the same, and every part thereof, with the appurtenances.

And your Orator avers that it is now the absolute and unqualified owner of all the said railroad, franchises and property above mentioned, and that it has become and is, by virtue of said conveyance above referred to and by said Act of Congress, and by said laws of the Territory of Oklahoma, the successor to all of the rights, privileges and franchises of said Blackwell, Enid and Southwestern Railway Company, and has continuously since the said 20th day of July, 1907, operated and maintained, and now operates and maintains, said railroad thereunder, as a part of its interstate system of railways

Your Orator avers that by the conveyance and Act of Congress aforesaid, and said laws of the Territory of Oklahoma, there were made and constituted valid and binding contracts by and between the United States and your orator, and by and between said
25 Territory of Oklahoma and your Orator, and that said contracts have been at all times since, and are now, valid and binding and in full force and effect, and that under and by virtue thereof your Orator became possessed of, and now owns, the right to forever operate and maintain said railroad upon and along the line upon which the same was constructed under said Act of Congress and the laws of the Territory of Oklahoma, and to receive and transport passengers and freight and United States Mail thereon to and from and between points on said railroad, and to engage in and carry on the business of a common carrier in the transportation of passengers and freight to and from and between points thereon.

(*g*) A line of railway lying within the said state of Oklahoma, running from the eastern boundary of said state at a point near Westville to the city of Muskogee, and from the city of Muskogee to the city of Okmulgee, of which said line of railway that portion lying between the eastern boundary of said state and Muskogee was constructed by the Ozark and Cherokee Central Railway Company, a corporation organized under the laws of the state of Arkansas in the year 1899, the right of way for which portion of said line of railway was acquired by said Ozark and Cherokee Central Railway Company under and by virtue of an act of Congress, approved March 2, 1899, entitled "An Act to provide for the acquiring of rights of way by railroad companies through Indian Reservations, Indian Lands and Indian Allotments, and for other purposes," in and by which said Act, and as a condition of the grant therein made, it was provided that railway companies constructing lines of railway thereunder should transport United States mail whenever required to do so by the Post Office Department, Congress further reserving the right, at any time, to alter, amend or repeal said Act, or any portion thereof.

That that portion of said line of railway extending between

Muskogee and Okmulgee, aforesaid, was constructed by the
26 Shawnee, Oklahoma and Missouri Coal & Railway Company, a corporation organized under the laws of the territory of Oklahoma in the year 1899, and the right of way therefor was obtained under an Act of Congress known as the "Enid and Anadarko Act" of February 28, 1902, hereinbefore specifically referred to, and which portion of said line of railway, together with all the franchises, rights, privileges, estate, right, title, interest, property, possession claim and demand of every kind whatsoever, both in law and in equity, the said Shawnee, Oklahoma and Missouri Coal and Railway Company, by good and sufficient deed, containing proper words of conveyance, duly executed, acknowledged and delivered, granted, sold, assigned, transferred and conveyed to the said Ozark and Cherokee Central Railway Company on March 16, 1903.

That said line of railway in this paragraph described, extending from the said Eastern boundary of said state of Oklahoma, through the city of Muskogee, to the city of Okmulgee in said state, was by said Ozark and Cherokee Central Railway Company, on or about the 15th day of July, 1907, and while it, the said Ozark and Cherokee Central Railway Company, was in the full use, enjoyment, ownership and operation thereof, by good and sufficient deed, containing proper words of conveyance, duly executed, acknowledged and delivered, granted, sold, assigned, transferred and conveyed unto your Orator, together with all the franchises, rights and privileges owned or enjoyed by said Grantor appertaining or appurtenant thereto, together with all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and in equity, of it, the said Ozark and Cherokee Central Railway Company of, in and to the same, and every part thereof, with the appurtenances, which said conveyance was made under and by virtue of an act of Congress, approved April 27, 1904, being an Act entitled "An Act
27 permitting the Ozark and Cherokee Central Railway Company and the Arkansas and Western Railway Company, and each or either of them, to sell and convey their railroads and other property in the Indian Territory to the St. Louis and San Francisco Railroad Company or to The Chicago, Rock Island and Pacific Railway Company, and for other purposes."

And your Orator avers that it is now the absolute and unqualified owner of all the said railroad, franchises and property above mentioned, and that it has become and is, by virtue of the conveyances above referred to and by virtue of said Acts of Congress and by virtue of the laws of the territory of Oklahoma, the successor to all the rights, privileges and franchises of said Shawnee, Oklahoma and Missouri Coal and Railway Company and of said Ozark and Cherokee Central Railway Company, and has continuously since the 15th day of July, 1907, operated and maintained, and now operates and maintains, said railroad as a part of its interstate system of railways.

Your Orator avers that by the conveyances, Acts of Congress and laws of the Territory of Oklahoma aforesaid, there were made and constituted valid and binding contracts by and between the United States and your Orator, and by and between the territory of Okla-

homa and your Orator, and that said contracts have been at all times since, and are now, valid and binding and in full force and effect; and that under and by virtue thereof your Orator became possessed of and now owns, the right to forever operate and maintain said railroad upon and along the line upon which the same was constructed, and to receive and transport passengers and freight and United States mail thereon to and from and between points on said Railroad, and to engage in and carry on the business of a common carrier in the transportation of passengers and freight to and from and between points thereon.

28 (*h*) A line of railway in said State of Oklahoma extending from a point at the boundary between the state of Arkansas and the state of Oklahoma near Fort Smith, Arkansas, to the boundary between the State of Oklahoma and the State of Texas at Red River near Paris, Texas, which said line of railway forms a part of your Orator's continuous interstate line of railway, and which said line of railway was built and constructed by the St. Louis and San Francisco Railway Company, a corporation organized under the laws of the state of Missouri under authority of an Act of Congress, approved August 2, 1882, entitled "An Act to grant a right of way for a railroad and telegraph line through the lands of the Choctaw and Chickasaw Nations of Indians to the St. Louis and San Francisco Railway Company, and for other purposes," to which Act your Orator refers and makes the same a part of this its amended bill.

That in and by said Act a right of way was granted to said St. Louis and San Francisco Railway Company for the construction of a railroad and telegraph line through that part of the lands of the Choctaw and Chickasaw Nations occupied by the Choctaw and Chickasaw Nations, said right of way to commence at any point to be seleted by said Company on the line of the Chotaw — Nations immediately contiguous to Sebastian *or* Scott Counties in the State of Arkansas, and to run thence in a southwesterly direction on the most direct and practicable route through the lands of the said Choctaw and Chickasaw Nations in the direction of Paris in the State of Texas, said road to continue to or connect with a proposed road from the City of Paris aforesaid.

That by Section Seven of said Act it is provided as follows:

"That no greater rates of fare or freight shall be charged in the Choctaw and Chickasaw Nations by said railway company than the lowest rate authorized by law in the States of Arkansas and

29 Texas, or either of them, for service or business of the same kind; and said railway company agrees to convey all passengers and to accept and transport all freight that may be offered, and to bill any freight which may be offered for shipment from points on said line by persons lawfully residing or doing business in the Choctaw *or* Chickasaw Nations to Chicago, with the privilege of stopping said freight at St. Louis by the shippers on the same terms as if the bills had been made for St. Louis in the first instance."

That within ninety days after the passage of said Act said St. Louis and San Francisco Railway Company duly accepted the conditions therein by a resolution of its Board of Directors, certified

to and filed with the Secretary of the Interior, and within thirty days after the passage of said Act said St. Louis and San Francisco Railway Company fixed and determined the general route of its line of road in accordance with said Act by filing with the Secretary of the Interior a map of the preliminary survey and by filing copies thereof in the offices of the Principal Chiefs of said Nations respectively, and within one year from the date of the acceptance of said Act by said Company said Company filed with the Secretary of the Interior a map showing the definite location of its line of road and telegraph line as in said Act provided, and constructed its said line of railroad as provided in said Act, being the line of railroad hereinabove in this sub-division (*h*) particularly described, within the time fixed by said Act and an Act of Congress approved June 1, 1886, and amendatory thereof, and duly entered into the use, enjoyment, operation and maintenance of said line of railroad.

That said St. Louis and San Francisco Railway Company thereafter, in pursuance to the authority granted to it by its charter, and on to-wit: the 11th day of June, 1891, duly executed and delivered its certain indenture of mortgage to the Mercantile Trust Company to secure an issue of bonds made and issued by said St. Louis and San Francisco Railway Company under and by virtue of the powers conferred upon it by its charter, by which said instrument of mortgage said St. Louis and San Francisco Railway Company conveyed and transferred unto said Mercantile Trust Company, among other things, the aforesaid line of railroad, together with all the franchises, rights and privileges granted by said Act of Congress, of date August 2, 1882, together with all the franchises, rights and privileges owned or enjoyed by said Grantor appertaining or appurtenant thereto, together with all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and in equity of it the St. Louis and San Francisco Railway Company of, in and to the same, and every part thereof, with the appurtenances.

That thereafter, to-wit: on the 30th day of April, 1896, in an action pending in the Circuit Court of the United States for the Eastern District of Missouri, and in the Eastern Division thereof, in which the said Mercantile Trust Company was complainant, and the said St. Louis and San Francisco Railway Company was defendant, the said indenture of mortgage above referred to was duly foreclosed and a decree entered therein by said Court on the said 30th day of April, 1896, ordering and directing the said railroad, together with all the rights, property, franchises, grants and privileges, above described, to be sold to pay and satisty the amount due upon the bonds of said St. Louis and San Francisco Railway Company; that thereafter, under and in pursuance to the decree of said Court, George D. Reynolds, Special Master appointed by said Court, after giving due and legal notice, as required by law and by the terms of said decree, did, on the 27th day of June, 1896, duly sell the said railroad, franchises and property above described to James A. Blair, Samuel C. Eastman, Charles S. Gleed and Edward C. Henderson in considera-

tion of the sum of — Dollars; that thereafter the said George
31 D. Reynolds, Special Master, did on the said 27th day of June, 1896, make a report of said sale to the said Circuit Court of the United States for the Eastern District of Missouri, in the Eastern Division thereof, which report was duly filed in the office of the Clerk of said Court on said day; that thereafter, on said 27th day of June, 1896, an order was duly made by the said United States Court affirming said sale and directing and ordering said George D. Reynolds, Special Master, to convey said railroad, franchises and property, by deed, to the said purchasers thereof.

That thereafter, on the 30th day of June, 1896, the said George D. Reynolds, as such Special Master, under and in pursuance to the decree of said Court and the order of said Court affirming said sale, duly transferred and conveyed, by deed, the said railroad, franchises and property above referred to, for the consideration aforesaid, unto the said James A. Blair, Samuel C. Eastman, Charles S. Gleed and Edward C. Henderson; that, on to-wit: the said 30th day of June, 1896, pursuant to said decree and to the order of said United States Circuit Court affirming said sale, said St. Louis and San Francisco Railway Company, did, by its deed bearing even date with the deed of said George D. Reynolds, Special Master above referred to, grant, convey, assign, transfer and release unto the said James A. Blair, Samuel C. Eastman, Charles S. Gleed and Edward C. Henderson the said purchasers, all and singular, the railroad and property, real, personal and otherwise, described and embraced in said deed of said George D. Reynolds, Special Master aforesaid; that thereafter, on the said 30th day of June, 1896, the said Mercantile Trust Company, as trustee under said indenture of mortgage of said St. Louis and San Francisco Railway Company, did, pursuant to the terms of said decree and in said order of confirmation contained, release, by
32 proper instrument duly executed and acknowledged, all and singular, the right, title and interest of the said Mercantile Trust Company of, in and to said Railroad, franchises and property to the said James A. Blair, Samuel C. Eastman, Charles S. Gleed and Edward C. Henderson.

That thereafter, on to-wit: the said 30th day of June, 1896, the said James A. Blair, Samuel C. Eastman, Charles S. Gleed and Edward C. Henderson, by good and sufficient deed, containing proper words of conveyance, duly executed, acknowledged and delivered, granted, sold, assigned, transferred and conveyed unto your Orator the said railroad, franchises and property conveyed by said deed of said George D. Reynolds, Special Master, to the said James A. Blair, Samuel C. Eastman, Charles S. Gleed and Edward C. Henderson, the same being more particularly described as follows:

"The railroad formerly of the said St. Louis and San Francisco Railway Company, known as the Red River Line, extending from Monett, in Barry County, Missouri, on the main line of railroad formerly of said Railway Company and now of the party of the second part through the State of Missouri to the State of Arkansas, and through the State of Arkansas to the Indian Territory, and through the Indian Territory to the Red River, being about two hundred and

eighty-five and seventy-nine/one-hundredths (285.79) miles in length.

The railroad formerly of said Railway Company known as the Powell Branch, extending from Fayetteville, on said Red River Line, in the State of Arkansas, to Powell, in said State, being about twenty-five and sixty-one/one-hundredths (25.61) miles in length.

All the property, right, title and interest of the parties of the first part, in the bridge across the Arkansas River, in the State of Arkansas, from the north bank to the south bank of said river, joining the two portions of said Red River line, abutting at the said respective banks of said river, and the railroad track thereon and the railroad approaches, being about thirty-four/one-hundredths (.34) miles in length.

All telegraph and telephone lines, including poles, wires, batteries, and other appurtenances, telegraph instruments, telephones and other instruments upon or along said lines; all rights of way, station, depot and terminal grounds, and all other lands and interest in lands upon or along said lines; all tunnels, road-beds, sidings, turnouts, switches and turn tables, superstructures, bridges, stringers, ties, rails, and frogs, chairs, bolts, splices, and other railroad appurtenances; all station houses, depots, warehouses, engine houses, car houses, water stations, machine shops, office buildings and other structures; all furniture, machinery, tools and implements; all materials and supplies; and all leases, trackage and traffic agreements, policies of insurance and contracts appertaining or relating
33 to said railroads and property; all franchises, and all powers, rights, privileges, immunities and exemptions which the said St. Louis and San Francisco Railway Company owned at the date of the execution of said consolidated mortgage or which it since acquired; all other property of whatever description owned by said St. Louis and San Francisco Railway Company at the date of the execution of said consolidated mortgage, or which it since acquired in extension of or appurtenant or incidental to, any of the railroads and property above described, etc."

And your Orator further avers that it is now the absolute and unqualified owner of all the said railroad, franchises and property above mentioned, and that it has become and is, by virtue of the proceedings and conveyances above referred to, and said Acts of Congress, the successor to all the rights, privileges and franchises of said St. Louis and San Francisco Railway Company, and has continuously since the 30th day of June, 1896, operated and maintained, and now operates and maintains, said railroad as a part of its interstate system of railways.

And your Orator avers that by the proceedings, conveyances and acts of Congress, aforesaid, there was made and constituted a valid and binding contract by and between the United States and your Orator, and that said contract has been at all times since, and is now, valid and binding and in full force and effect; that under and by virtue of the terms and conditions of said Act of Congress, by said proceedings and by said conveyances your Orator became possessed of and now owns the right to forever operate and maintain said railroad upon and along the line upon which the same was constructed

under said Acts of Congress aforesaid, and to receive and transport passengers and freight and United States mail thereon to and from and between points on said railroad, and to engage in and carry on the business of a common carrier in the transportation of passengers and freight to and from and between all points on said railroad.

(*i*) A line of railway extending from a point at the boundary between the states of Kansas and Oklahoma near the city of Baxter, Kansas, into and through said state of Oklahoma, through the City of Miami to the City of Afton, which said line of railway forms a part of your Orator's continuous interstate line of railway; that that portion of said line of railway extending from its point of beginning near Baxter, aforesaid, to the City of Miami was built and constructed by Kansas City, Fort Scott and Memphis Railroad Company, a corporation, under and by virtue of and in accordance with the provisions of an Act of Congress, approved March 28, 1896, entitled "An Act to authorize the Kansas City, Fort Scott and Memphis Railroad Company to extend its line of railroad into the Indian Territory, and for other purposes," to which Act your Orator refers and makes the same a part of this its amended bill.

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That thereafter, to-wit: on or about the 12th day of August, 1901, Kansas City, Fort Scott and Memphis Railroad Company, while it was in the full use, enjoyment, ownership and operation of said portion of the road herein described so constructed by it, by good and sufficient deed, containing proper words of conveyance, duly executed, acknowledged and delivered, granted, sold, assigned, transferred and conveyed unto the Kansas City, Fort Scott and Memphis Railway Company, a corporation, the said line of railroad so constructed by it, together with all the franchises, rights and privileges owned or enjoyed by said Grantor appertaining or appurtenant thereto, together with all the estate, right, title, interest, property, possession, claim and demand whatsoever, both at law and in equity, of it, the said Kansas City, Fort Scott and Memphis Railroad Company, of, in and to the same, and every part thereof, with the appurtenances.

That that portion of said line of railroad in this sub-division (*i*) described, lying between the cities of Miami and Afton in said state of Oklahoma, was built and constructed under authority of an Act of Congress which went into effect April 6, 1896, being an Act entitled "An Act authorizing the Arkansas Northwestern Railway Company to construct and operate a railway through the Indian Territory, and for other purposes," and Acts amendatory thereof and supplemental thereto, in and by which said Act Congress expressly reserved the right to regulate the charges for freight and passengers on said railway until state government should be formed and exist in the territory in which said railway or a part thereof should be located, and further expressly reserved the right to fix and regulate at all times the cost of such transportation by said Railway Company whenever such transportation should extend from one state into another, or should extend into more than one state, with the right to at any time alter, amend or

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repeal said Act; and it was further provided that said Railway Company should carry the United States mail at such prices as Congress might by law provide, and until such rate should be fixed by law the Post Master General should fix the same.

That said Arkansas Northwestern Railway Company duly accepted all of the terms and conditions of said Act, and that within the time prescribed by said Act, and Acts Supplemental thereto and amendatory thereof, maps showing the route of its located line were filed in the office of the Secretary of Interior and in the office of the principal Chiefs of each of the Nations or tribes through whose land said railway should be located, and that a map showing the entire line of the said railway in the Indian Territory was filed with and approved by the Secretary of the Interior before the construction of said railway in said Indian Territory was begun.

That thereafter, to-wit: on the 11th day of February, 1898, said Arkansas Northwestern Railway Company, by good and
36 sufficient deed, containing proper words of conveyance, duly executed, acknowledged and delivered, granted, sold, assigned, transferred and conveyed unto the Gulf, Arkansas and Northwestern Railroad Company, a corporation of the state of Arkansas, all of the rights, franchises, and privileges of said Grantor, under said Acts of Congress, for the construction of said line of railway, together with all the estate, right, title, interest, property, possession, claim and demand whatsoever, both at law and in equity, of it the said Arkansas Northwestern Railway Company of, in and to the same, and every part thereof, with the appurtenances.

That thereafter, to-wit: on or about the 5th day of April, 1901, said Gulf, Arkansas and Northwestern Railroad Company, by good and sufficient deed, containing proper words of conveyance, duly executed, acknowledged and delivered, assigned, transferred, and conveyed unto Kansas City, Fort Scott and Memphis Railroad Company, a corporation of the Territory of Oklahoma, all of the property, rights, privileges and franchises granted and conveyed to it by the said Arkansas Northwestern Railway Company, as hereinbefore stated.

That thereafter, to-wit: on July 23, 1901, said Kansas City, Fort Scott and Memphis Railroad Company, by good and sufficient deed, containing proper words of conveyance, duly executed, acknowledged and delivered, granted, sold, assigned, transferred and conveyed unto The Kansas City, Fort Scott and Memphis Railway Company, a corporation organized under the laws of the State of Kansas, all of the property, franchises, rights and privileges conveyed to it by the instruments of conveyance hereinbefore last referred to.

That under and by virtue of said conveyances the said The Kansas City, Fort Scott and Memphis Railway Company, a corporation organized under the laws of the State of Kansas,
37 under and by virtue of the authority granted by said Acts of Congress and in accordance therewith, built and constructed that portion of the line of railway in this sub-division (*i*) above described, extending from the said City of Miami to the said City of Afton, and thereupon the said The Kansas City, Fort Scott and

Memphis Railway Company entered into the full use, enjoyment, operation and maintenance of the entire line of railway in this sub-division (*i*) described.

That thereafter, to-wit: on the 23rd day of August, 1901, said The Kansas City, Fort Scott and Memphis Railway Company, by proper instrument of lease, containing proper words of conveyance, duly executed, acknowledged and delivered, granted, demised, assigned, transferred and conveyed unto your Orator the entire line of railway in this sub-division (*i*) described, together with all the franchises, rights and privileges owned or enjoyed by said Lessor appertaining or appurtenant thereto, together with all the estate, right, interest, property, possession, claim and demand whatsoever of it, the said The Kansas City, Fort Scott and Memphis Railway Company, of, in and to the same, and every part thereof, with the appurtenances.

And your Orator avers that it is now in the full use, enjoyment and possession as Lessee of said The Kansas City, Fort Scott and Memphis Railway Company of all the said railroad, franchises, and property above mentioned, and that it has continuously since the 23rd day of August, 1901, operated and maintained, and now operates and maintains, said line of railroad under and by virtue of the conveyances and by the Acts of Congress aforesaid, as a part of its interstate system of railways.

Your Orator avers that by the conveyances and Acts of Congress aforesaid there were made and constituted valid and binding contracts by and between the United States and your Orator, and that said contracts have been at all times since, and are now, valid and binding and in full force and effect, and that thereunder
38 your Orator became possessed of, and now owns, the right to operate and maintain said railroad upon and along the line upon which the same is constructed as aforesaid, and to receive and transport passengers and freight and United States mail thereon to and from and between points on said railroad, and to engage in and carry on the business of a common carrier in the transportation of passengers and freight to and from and between all points thereon.

(*j*) A line of railway entering the state of Oklahoma on the eastern boundary thereof between the states of Missouri and Oklahoma, near Southwest City in the State of Missouri, and extending through the cities of Dodge and Grove in said State of Oklahoma, to a point near Grand River in said State, which said line of railway forms a part of your Orator's continuous interstate line of railway, and which said line of railway was built and constructed by the Arkansas and Oklahoma Railroad Company, a corporation duly organized under the laws of Arkansas on April 1, 1898, and the right of way of said line of railway was acquired by said Arkansas and Oklahoma Railroad Company under and by virtue of the provisions of an Act of Congress, Approved March 2, 1899, being entitled "An Act to provide for the acquiring of rights of way by railroad companies through Indian Reservations, Indian Lands and Indian Allotments, and for other purposes," to which Act your Orator refers and makes the same a part of this its amended bill.

That the said Act of Congress provided, among other things, that the grants therein made were made upon condition that the railway companies constructing lines of railway under the provisions of said Act should transport United States mail whenever required to do so by the Post Office Department; that said Arkansas and Oklahoma Railroad Company duly complied with all the terms and conditions of said Act of Congress, and constructed said line of railway as provided therein, being the line of railway hereinbefore in
39 this sub-division (*j*) particularly described, and duly entered into the use, enjoyment, operation and maintenance of the same.

That thereafter, to-wit: on the 21st day of June, 1901, and while the said Arkansas and Oklahoma Railroad Company was in the full use, enjoyment, ownership and operation of said line of railway, it, the said Arkansas and Oklahoma Railroad Company, by good and sufficient deed, containing proper words of conveyance, duly executed, acknowledged and delivered, granted, sold, assigned, transferred and conveyed unto your Orator the said line of the said railroad, together with all the franchises, rights and privileges owned or enjoyed by said grantor appertaining or appurtenant thereto, together with all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and in equity, of it, the said Arkansas and Oklahoma Railroad Company, of, in and to the same, and every part thereof, with the appurtenances.

And your Orator avers that it is now the absolute and unqualified owner of all the said railroad, franchises and property above mentioned, and that it has become and is, by virtue of said conveyance above referred to and by said Act of Congress, the successor to all of the rights, privileges and franchises of said Arkansas and Oklahoma Railroad Company, and has continuously since the said 21st day of June, 1901, operated and maintained, and now operates and maintains, said railroad thereunder as a part of its interstate system of railways.

And your Orator avers that by the conveyance and Act of Congress aforesaid, there was made and constituted a valid and binding contract by and between the United States and your Orator, and that said contract has been at all times since, and is now, valid and binding and in full force and effect, and that under and by virtue thereof your Orator became possessed of, and now
40 owns, the right to forever operate and maintain said railroad upon and along the line upon which the same was constructed under said Act of Congress, and to receive and transport passengers and freight and United States mail thereon to and from and between the points on said railroad, and to engage in and carry on the business of a common carrier in the transportation of passengers and freight to and from and between points thereon.

(*k*) A line of railway extending from a point at the boundary line between the states of Arkansas and Oklahoma, near the city of Arkinda, Arkansas, in a westerly direction to the city of Ardmore, Oklahoma, which said line of railway forms a part of your Orator's continuous interstate line of railway, and which said line of railway

was built and constructed by The Arkansas and Choctaw Railway Company, a corporation organized under the laws of the State of Arkansas, on July 31, 1895, under and by virtue of the authority of and in compliance with the provisions of an Act of Congress, approved June 28, 1899, entitled "An Act to authorize The Arkansas and Choctaw Railway Company to construct and operate a railway through the Choctaw and Chickasaw Nations in the Indian Territory, and for other purposes," to which said Act your Orator refers and makes the same a part of this its amended bill.

That under and by virtue of said Act said The Arkansas and Choctaw Railway Company was invested and empowered with the right of locating, constructing, owning, equipping, operating, using and maintaining a railway through the Choctaw and Chickasaw nations in the Indian Territory, beginning at a point on the boundary line between the said Choctaw Nation and the County of Little River in the State of Arkansas, where the said railway is now constructed, running thence by the most feasible and practicable route in a westerly direction through the said Choctaw Nation and through the Chickasaw Nation to such point on the western boundary line of the Chickasaw Nation at or near the town of Sugden, in
41 said Nation, as said corporation should select.

That in and by said Act Congress expressly reserved the right to regulate the charges for freight and passengers on said railway until state government or governments should exist in said Nations within the limits of which said railway, or a part thereof, should be located, and further expressly reserved the right to fix and regulate at all of the times the cost of such transportation by said railway or company whenever such transportation should extend from one state into another or should extend into more than one state, with the right to at any time amend, add to, alter or repeal said Act; and it was further provided in and by said Act that said Railway Company should carry the United States mail at such prices as Congress should by law provide, and that until such rate should be fixed by law the Post Master General should fix the same.

That said The Arkansas and Choctaw Railroad Company duly accepted and complied with all the terms and conditions of said Act of Congress, and within the time therein provided caused a map showing the route of its located line through said Nations to be filed in the office of the Secretary of the Interior and in the offices of the principal Chiefs of the said nations or tribes through whose land said railway was located, and also a map showing the entire line of the road in the Indian Territory was, as provided in said Act, filed with and approved by the Secretary of the Interior before the construction of said line of railroad was begun, and built and constructed said line of railroad as provided in said Act, being the line of railroad hereinbefore in this sub-division (*k*) particularly described, and duly entered into the use, enjoyment, operation and maintenance of the same.

That on the 2nd day of October, 1902, the corporate name of said The Arkansas and Choctaw Railway Company was duly changed,

as and in the manner provided by the laws of the State of Arkansas then in effect, to the St. Louis, San Francisco and New Orleans Railroad Company.

42 That thereafter, to-wit: on the 30th day of April, 1907, and on Nov. 30, 1907, said St. Louis, San Francisco and New Orleans Railroad Company, it being then in the full use, enjoyment, ownership and operation of said line of railway did, by a good and sufficient deed, containing proper words of conveyance, duly executed, acknowledged and delivered, granted, sold, assigned, transferred and conveyed unto your Orator the said railroad, together with all the franchises, rights and privileges owned and enjoyed by said Grantor appertaining or appurtenant thereto, together with all the estate, right, title, interest, property, possession, claim and demand whatsoever both at law and in equity of it, the said St. Louis, San Francisco and New Orleans Railroad Company, of, in and to the same, and every part thereof, with the appurtenances.

And your Orator avers that it is now the absolute and unqualified owner of all the said railroad franchises and property above-mentioned, and that it has become and is, by virtue of said conveyances above referred to and by said Acts of Congress, the successor — all the rights, privileges and franchises of said St. Louis, San Francisco and New Orleans Railroad Company, and has continuously since the 30th day of April, 1907, operated and maintained, and now operates and maintains, said railroad under and by virtue of said Act of Congress as a part of its interstate system of railways.

And your Orator avers that by the conveyance and Act of Congress aforesaid, there was made and constituted a valid and binding contract by and between the United States and your Orator, and that said contract has been at all times since, and is now, valid and binding and in full force and effect; that under and by virtue of the terms and conditions of said Act of Congress and of said contract, your Orator became possessed of, and now owns, the right to forever operate and maintain said railroad upon and along the line upon which the same was constructed under said Act of Congress as aforesaid, and to receive and transport passengers

43 and freight and United States mail thereon to and from and between points on said railroad, and to engage in and carry on the business of a common carrier in the transportation of freight and passengers to and from and between all points on said railroad.

(*l*) A line of railway extending from the city of Platter, State of Oklahoma, to the City of Mead, in said State, which said line of railway forms a part of your Orator's continuous interstate line of railway, and which said line of railway was built and constructed by the said St. Louis, San Francisco and New Orleans Railroad Company under and by virtue of the authority of the general provisions of an Act of Congress of February 28, 1902, entitled "An Act to grant a right of way through the Oklahoma Territory and the Indian Territory to the Enid and Anadarko Railroad Company, and for other purposes," said Act being commonly known as the Enid and Anadarko Act, and being the Act heretofore in this amended

bill referred to, and to which Act of Congress your Orator refers and makes the same a part of this its amended bill.

That said St. Louis, San Francisco and New Orleans Railroad Company duly accepted and complied with all the terms and conditions of said Enid and Anadarko Act, and that the line of railroad in this sub-division (*l*) described was by said St. Louis, San Francisco and New Orleans Railroad Company built and constructed in accordance with the provisions of said Act, and after the completion of said railroad said St. Louis, San Francisco and New Orleans Railroad Company duly entered into the use, enjoyment, operation and maintenance of the same.

That thereafter, to-wit: on the 30th day of April, 1907, and on Nov. 30, 1907, and while it was in the full use, enjoyment, ownership and operation of said line of railway it, the said St. Louis, San Francisco and New Orleans Railroad Company, by good and sufficient deed, containing proper words of conveyance, duly executed, acknowledged and delivered, granted, sold, assigned, transferred and conveyed unto your Orator the said railroad, together with all the franchises, rights and privileges owned or enjoyed by said grantor appertaining or appurtenant thereto, together with all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and in equity, of it the said St. Louis, San Francisco and New Orleans Railroad Company, of, in and to the same, and every part thereof, with the appurtenances.

44

And your Orator avers that it is now the absolute and unqualified owner of all the said railroad, franchises and property above mentioned, and that it has become and is, by virtue of said conveyance above referred to and by said Act of Congress, the successor to all of the rights, privileges and franchises of the said St. Louis, San Francisco and New Orleans Railroad Company, and has continuously since the said 30th day of April, 1907, operated and maintained, and now operates and maintains, said railroad thereunder as a part of its interstate system of railways.

Your Orator avers that by the conveyance and Act of Congress aforesaid, there was made and constituted a valid and binding contract by and between the United States and your Orator, and that said contract has been at all times since, and is now, valid and binding and in full force and effect, and that under and by virtue thereof your Orator became possessed of, and now owns, the right to forever operate and maintain said railroad upon and along the line upon which the same was constructed under said Act of Congress, and to receive and transport passengers and freight and United States mail, thereon to and from and between points on said railroad, and to engage in and carry on the business of a common carrier of passengers and freight to and from and between points thereon.

(*m*) A line of railway extending from the city of Scullin in the State of Oklahoma, to the City of Sulphur Springs in said State, which said line of railway forms a part of your Orator's continuous interstate line of railway, and which said line of railway was built and constructed by The Sulphur Springs Railway Company, a corporation organized under the laws of the Terri-

45

tory of Oklahoma on April 14, 1902, entitled "An Act to grant a right of way through the Oklahoma Territory and the Indian Territory to the Enid and Anadarko Railroad Company, and for other purposes," said Act being commonly known as the Enid and Anadarko Act, to which Act your Orator refers and makes the same a part of this its amended bill, and which said Enid and Anadarko Act, together with the provisions, covenants and conditions therein contained are hereinabove specifically set forth.

That said The Sulphur Springs Railway Company duly accepted and complied with all the terms and conditions of the laws of the Territory of Oklahoma and of said Enid and Anadarko Act, and duly built and constructed the aforesaid line of railroad in accordance with the terms and conditions therein contained, and duly entered into the use, enjoyment, operation and maintenance of the same.

That thereafter, to-wit: on the 18th day of July, 1907, and while it was in the full use, enjoyment, ownership and operation of said line of railway, the said The Sulphur Springs Railway Company, by good and sufficient deed, containing proper words of conveyance, duly executed, acknowledged and delivered, granted, sold, assigned, transferred and conveyed unto your Orator the said railroad, together with all the franchises, rights and privileges owned or enjoyed by said The Sulphur Springs Railway Company appertaining or appurtenant thereto, together with all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and in equity, of it, the said The Sulphur Springs Railway Company of, in and to the same, and every part thereof, with the appurtenances.

And your Orator avers that it is now the absolute and unqualified owner of all the said railroad, franchises and property above mentioned, and that it has become and is, by virtue of said conveyance above referred to and by said Act of Congress and the said
46 laws of the Territory of Oklahoma, the successor to all the rights, privileges and franchises of said The Sulphur Springs Railway Company, and has continuously since the said 18th day of July, 1907, operated and maintained, and now operates and maintains, said railroad thereunder as a part of its interstate system of railways.

Your Orator avers that by the conveyance and Act of Congress and laws of the Territory of Oklahoma aforesaid, there were made and constituted valid and binding contracts by and between the United States and your Orator, and by and between the Territory of Oklahoma and your Orator, and that the said contracts have been at all times since, and are now, valid and binding and in full force and effect, and that under and by virtue thereof your Orator became possessed of, and now owns, the right to forever operate and maintain said railroad upon and along the line upon which the same was constructed, and to receive and transport passengers and freight and United States mail thereon to and from and between points on said railroad, and to engage in and carry on the business of a common

carrier in the transportation of passengers and freight to and from and between points thereon.

(*n*) A line of railway extending from a point on the boundary line between the states of Kansas and Oklahoma at a point south of Arkansas City, in the state of Kansas, to Blackwell, in the state of Oklahoma, which said line of railway forms a part of your Orator's continuous interstate line of railway, and which said line of railway was built and constructed by the Kansas, Oklahoma and Gulf Railway Company, a corporation organized July 12, 1897, under the laws of the territory of Oklahoma, under and pursuant to the authority granted to it by the said Territory of Oklahoma and under and by virtue of the authority of an Act of Congress, approved June 27, 1898, entitled "An Act to authorize the Kansas, Oklahoma and Gulf Railway Company to construct and operate a railway through the Chilloco Indian Reservation, Territory of Oklahoma, and for other purposes," to which Act your Orator refers and makes the same a part of this its amended bill.

47 That a map of definite location showing the entire route of said railway through the said Indian Reservation was by said Kansas, Oklahoma and Gulf Railway Company filed with and approved by the Secretary of the Interior before any part of said railway was constructed through or into said reservation, and that thereafter said railroad was built and constructed under and by virtue of and in conformity with the provisions of said Act of Congress and of the laws of the said Territory of Oklahoma, and said Kansas, Oklahoma and Gulf Railway Company duly entered into the use, enjoyment, operation and maintenance of the same.

That afterwards, to-wit: on the 15th day of November, 1899, and while the said Kansas, Oklahoma and Gulf Railway Company was in the full use, enjoyment, ownership and operation of said line of railway, it, the said Kansas, Oklahoma and Gulf Railway Company, by good and sufficient deed, containing proper words of conveyance, duly executed, acknowledged and delivered, granted, sold, assigned, transferred and conveyed unto your Orator the said railroad, together with all the franchises, rights and privileges owned or enjoyed by said Kansas, Oklahoma and Gulf Railway Company appertaining or appurtenant thereto, together with all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and in equity, of it, the said Kansas, Oklahoma and Gulf Railway Company, of, in and to the same, and every part thereof, with the appurtenances.

And your Orator avers that it is now the absolute and unqualified owner of all the said railroad, franchises and property above mentioned, and that it has become and is, by virtue of said conveyance and by said Act of Congress and by said laws of the territory of Oklahoma, the successor to all the rights, privileges and franchises of said Kansas, Oklahoma and Gulf Railway Company, and has continuously since the said 15th day of November, 1899, operated and maintained, and now operates and maintains,

48 said railroad under and by virtue of the conveyance, Act of Congress and laws of the territory of Oklahoma aforesaid, as a part of its interstate system of railways.

And your Orator avers that by the conveyance, Act of Congress and laws of the Territory of Oklahoma aforesaid, there were made and constituted valid and binding contracts between the United States and your Orator, and between the Territory of Oklahoma and your Orator, and that said contracts have been at all times, and are now, valid and binding and in full force and effect; that thereunder your Orator became possessed of, and now owns, the right to forever operate and maintain said railroad upon and along the line upon which the same was constructed as aforesaid, and to receive and transport passengers and freight and United States mail thereon to and from and between points on said railroad, and to engage in and carry on the business of a common carrier in the transportation of passengers and freight to and from and between all points thereon.

V.

Your Orator further avers that all of the various lines of railway hereinbefore described were constructed and completed prior to the 16th day of November, 1907, at which said date the said Territory of Oklahoma was admitted to statehood in the Union as the State of Oklahoma, and that all of said lines of railway now form and have at all times continuously since the respective dates of their acquisition by your Orator as aforesaid, formed a part of a continuous and connecting line of interstate railway over which your Orator is now, and has been since the respective dates of the completion of said lines of railway and the acquisition thereof by your Orator, conveying, as a common carrier, interstate and intrastate commerce, and also United States mail.

VI.

Your Orator further avers that the legislation of Congress
49 as applicable to the Indian Territory for many years prior to the creation of the Territory of Oklahoma, invited the investment of capital in railroad enterprises, and that the laws of the Territory of Oklahoma during its entire history as a territory invited the investment of capital in railroad enterprises, and in pursuance to the invitation, offers and conditions contained in the various Acts of Congress and laws of the Territory of Oklahoma, your Orator has invested many millions of dollars in railroad properties in what is now the state of Oklahoma; that the said properties have been assessed by the Taxing Board of the State of Oklahoma for the current year at the sum of Forty-seven Million, Two Hundred Sixty-six Thousand, Three Hundred and Eleven Dollars ($47,266,311.00); that by virtue of the several Acts of Congress and laws of the Territory of Oklahoma, and your Orator's investments thereunder, it has acquired the right, by contract, to continue to own, maintain, operate and enjoy its various lines of railway herein described, and in so doing to possess and enjoy all the rights of a common carrier of interstate and intrastate commerce, as well as all the rights, privileges and franchises of corporations organized under the laws of the Territory of Oklahoma.

VII.

Your Orator further shows that under the laws in force in the Indian Territory, and in the Territory of Oklahoma, prior to the organization of the State of Oklahoma it was not required to secure from the Secretary of said Territory a License, and that it did not secure from said Secretary any license, and that it has not since the organization of the State of Oklahoma at any time procured from the Secretary of State of the said State of Oklahoma any license or authority, to transact its business in said State, but has continued to carry on its business as a common carrier therein under the authority of the laws in force at the time of the organization of said State and of the constitution of the said State of Oklahoma insofar as it was applicable.

VIII.

Your Orator further shows to the Court that at the regular session of the Legislature of the State of Oklahoma in the year 1908, said Legislature passed the following Act, which was approved by the Governor of said State on the 26th day of May, 1908, and which would, had it been a valid Act, have become, by virtue of an emergency clause therein contained, effective as a law on the said 26th day of May, 1908, to-wit:

"An Act Fixing the domicile of persons, firms and corporations transacting business within the State of Oklahoma; providing for forfeiture and revocation of license to transact business in the state upon the filing in any court of record, claim or declaration of domicile in another state or foreign country; the duty of judges relative thereto; and providing penalty for transacting business after revocation of license.

Be it Enacted by the People of the State of Oklahoma:

SECTION 1. That the domicile of every person, firm or corporation conducting a business in person, by agent, through an office, or otherwise transacting business within the State of Oklahoma, and which has complied with or may comply with the Constitution and laws of the State of Oklahoma, shall be for all purposes deemed and held to be the State of Oklahoma.

SEC. 2. That the license or charter to do business within the State of Oklahoma of every person, firm or corporation conducting a business in person, by agent, through an office or otherwise transacting business within said State of Oklahoma, who shall claim or declare in writing before any court of law or equity within said State of Oklahoma, domicile within another State or foreign country, shall, upon such declaration, be immediately revoked.

SEC. 3. That it shall be the duty of the Judge of any court in which any declaration or claim of domicile within another State or foreign country is filed, to report to the Secretary of State and to furnish said Secretary of State with an authenticated copy of any claim or declaration in writing made or filed, declaring domicile within another State or foreign country.

SEC. 4. That the Secretary of State immediately upon the receipt of the copy of the claim or declaration of any person, firm or corporation as aforesaid, shall declare the license or charter of any person, firm or corporation so filing said claim or declaration, forfeited and revoked.

SEC. 5. That any person, firm or corporation conducting a business in person, by agent, through an office, or otherwise transacting business within the State of Oklahoma, whose license
51 to do business within said State of Oklahoma shall have been revoked as aforesaid, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than one thousand dollars ($1,000.00) nor more than five thousand dollars ($5,000.00) for each day or part thereof they shall so conduct a business after the revocation of their license to do business within this State as aforesaid.

SEC. 6. Nothing in this act shall be construed to allow any corporation organized under the law of any other State, Territory or foreign country to exercise the right of eminent domain in the State of Oklahoma.

SEC. 7. An emergency is hereby declared to exist, whereby the immediate passage of this act is declared necessary for the preservation of the public peace and safety, and this act shall be in full force and effect upon its passage and approval.

Approved May 26, 1908."

IX.

Your Orator further avers that in and by Section 450 of the Constitution of the State of Oklahoma, and under the subject "Existing Rights; Process—Section 1," it is provided as follows:

"No existing rights, actions, suits, proceedings, contracts or claims shall be affected by the change in the forms of government, but all shall continue as if no change in the forms of government had taken place, and all process which may have been issued previous to the admission of the state into the Union under the authority of the Territory of Oklahoma, or under the authority of the laws in force in the Indian Territory, shall be as valid as if issued in the name of the state,"

the purpose for which said provision was adopted, being stated in Section 449 of said Constitution, to be that no inconvenience may arise by reason of a change from the forms of government then existing in said Indian Territory and said Oklahoma Territory.

X.

Your Orator further avers that suit was instituted and pending against it in the District Court of Comanche County, State of Oklahoma, by one Gertrude Goode, as the Administratrix of her deceased husband, seeking to recover against your Orator damages on account of personal injuries sustained by her said husband prior to the 16th day of November, 1907, while he was a passenger upon that portion of the line of railway of your Orator which it acquired

from The Oklahoma City and Western Railroad Company,
52 as hereinbefore more fully set out; that your Orator, exercising its right under the Constitution and laws of the United States, duly filed in said cause a proper petition, together with a good and sufficient bond, for a removal thereof to the Circuit Court of the United States for the Western District of the State of Oklahoma, and that thereupon the Presiding Judge of the said District Court of the State of Oklahoma certified to the Secretary of State of said State the fact that such petition and bond had been filed in his said Court. Whereupon the said defendant Secretary of State, acting by and through the said defendant Leo Meyer, Acting Secretary of State, and subsequent to the institution of this suit, signed the following instrument:

"STATE OF OKLAHOMA.

Revocation of Charter of St. Louis & San Francisco Railroad Company in Oklahoma.

GUTHRIE, OKLAHOMA, *August 29th,* 1908.

In the District Court.

GERTRUDE GOODE, Administratrix of the Estate of Frank R. Goode, Deceased, Plaintiff,

vs.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, a Corporation, Defendant.

Petition for Removal *and* to the Circuit Court of the United States.

STATE OF OKLAHOMA,
Comanche County:

Having received due and legal notice from J. T. Johnson, Judge of the District Court of Comanche County, that the above named corporation defendant, St. Louis & San Francisco Railroad Company has filed a petition for removal to the United States Court, a certified copy of which is on record in the office of the Secretary of State at the Capit*a*l in the City of Guthrie in the
53 State of Oklahoma.

Therefore, I, Leo Meyer, Assistant Secretary of State and now Acting Secretary of State of the State of Oklahoma by authority invested in me under section four of House Bill #131 approved by the Governor of the State of Oklahoma, C. N. Haskell, May 26th, 1908, do hereby declare the license of the said St. Louis & San Francisco Railroad Company to transact business in the State of Oklahoma forfeited and revoked.

In testimony whereof, I have set my hand and cause- to be affixed the great Seal of the State.

Done at the city of Guthrie this twenty-ninth day of August, A. D., 1908.

[SEAL.] LEO MEYER,
Acting Secretary of State."

XI.

That in and by the instrument herein immediately above set forth, the said defendants, Bill Cross, as Secretary of State, and Leo Meyer, as Acting Secretary of State, attempted to declare the charter and authority of your Orator to do business within the state of Oklahoma to be revoked and forfeited, and that since the date of the signing of said instrument in writing the said defendants, and each of them, have continuously threatened and attempted, and are now threatening and attempting, to deprive your Orator of its right to do business in the said State, under and by virtue of the provisions of the said Act of the Legislature of the State of Oklahoma, set out in full in Paragraph VIII. of this your Orator's amended bill, and that the effect of such instrument in writing, unless the same be by this Court declared void and of no effect, and the effect of the action of the defendants herein, and each of them, in attempting to enforce and enforcing the provisions of said Act of the Legislature hereinbefore particularly set forth, will be to subject
54 your Orator to numerous and sundry prosecutions under said Act, and to subject your Orator to further harrassing and annoying litigation, together with the possibility of having various courts of said state which entertain jurisdiction of misdemeanor cases assess against your Orator fines under said Act of the Legislature, ranging from One Thousand Dollars ($1,000.00) to Five Thousand Dollars ($5,000.00), for each day or part thereof during which your Orator transacts business in said State, and that your Orator is entirely without remedy *of* law, and that the injury and damage which would result to your Orator from the enforcement of said Act of the Legislature are irreparable.

XII.

Your Orator avers that the said Act of the Legislature, approved on the 26th day of May, 1908, and hereinbefore contained, is unreasonable, unjust, oppressive, unlawful, discriminative, confiscatory, unconstitutional and void, in the following respects, to-wit:

(1) Because said Act is contrary to and violative of Section 2 of Article III. of the Constitution of the United States, which provides that the judicial power of the United States shall extend to all controversies and cases arising under the Constitution of the United States, the laws made under its authority, or between citizens of different states, in that said Act directly and expressly attempts to defeat the jurisdiction of the Courts of the United States of controversies arising under the Constitution of the United States and the laws passed in pursuance thereof, and of controversies between citizens of different states.

(2) Because said Act of the Legislature is contrary to and viola-

tive of Section 10 of Article I. of the Constitution of the United States, which prohibits any state from passing any law impairing the obligation of contracts, in that it seeks to deprive your Orator of the right to continue, maintain and operate its road within the state of Oklahoma, although your Orator has such right by
55 virtue of its contract with the Government of the United States and its contract with the Territory of Oklahoma, as hereinbefore fully set forth.

(3) Because said Act is contrary to and violative of Section 450 of the Constitution of the State of Oklahoma, in that it seeks to deprive your Orator of existing rights, contracts and claims in respect to and in connection with its right to conduct its business as a common carrier in the State of Oklahoma, acquired prior to the admission of said State into the Union.

(4) Because the lines of railway of your Orator hereinbefore described within the said State of Oklahoma forms a connecting link between its lines of railway in other states, and it is necessary to conduct its business as a common carrier of freight and passenger between other states over its said lines of railway in the State of Oklahoma, and that the effect of the enforcement of said act by the defendants herein would necessarily, and as a direct and intended consequence, unreasonably and directly interfere with the interstate business of your Orator, and would impose an intolerable and prohibitive burden upon all of such interstate commerce so passing into, over or through the said State of Oklahoma over the lines of railway so maintained by your Orator. The said Act, therefore, in attempting to empower and authorize the said Secretary of State to deny and take from your Orator the right to carry on its business within the said State of Oklahoma as a common carrier, is contrary to and violative of Section 8 of Article I. of the Constitution of the United States, which reserves to Congress the right and power to regulate commerce with foreign nations, among the several states and with the Indian Tribes. And your Orator submits that, inasmuch as the Constitution of the United States, and the laws passed in pursuance thereof, have committed to Congress and its authorized Commission the power to regulate commerce among the states,
56 and withdraws the same in every degree from interference on the part of any state or any state official, the said Act of the Legislature of Oklahoma interfering therewith, is repugnant to the Constitution of the United States and the laws passed in pursuance thereof, and is therefore null and void.

(5) Because the said Act, purporting to give to the Secretary of State of the State of Oklahoma the right arbitrarily to deny your Orator the right to do business within said State, and thereby depriving your Orator of the use of its property as a common carrier of freight and passengers for hire, is contrary to and violative of Section 1, Article XIV. of the Amendments to the Constitution of the United States, which provides that no state shall deprive any person of property without due process of law, and of Section 16, Article II. of the Constitution of the State of Oklahoma, which provides that no person shall be deprived of property without due process of law.

(6) Because said Act in denying to your Orator, under pain of heavy penalties, the right to remove a case to the Federal Court which may be commenced in a state court of Oklahoma, thereby depriving your Orator of the right to resort to the courts of the land in an orderly manner, is contrary to and violative of Section 1 of Article XIV. of the Amendments to the Constitution of the United States, which provides that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

(7) Because said Act in denying to your Orator, a foreign railway corporation, being now, and for many years last past, lawfully and properly within the jurisdiction of the State of Oklahoma, the right of appeal to the Federal Courts for a trial of its rights or redress of its wrongs, such right being freely and fully accorded to all domestic railway corporations of the State of Oklahoma, and to all other persons within said State, is contrary to and violative
57 of Section 1 of Article XIV. of the Amendments to the Constitution of the United States, which provides that no state shall deny to any person within its jurisdiction the equal protection of the law.

(8) Because said Act in providing that any railroad company transacting business within the State of Oklahoma whose license to do business therein shall have been revoked, shall be deemed guilty of a misdemeanor and subjected to a fine of not less than One Thousand Dollars ($1,000.00) or more than Five Thousand Dollars ($5,000.00) for each day or part thereof that such company shall so conduct a business in said state after the revocation of its said license, is contrary to and violative of the Eighth Amendment to the Constitution of the United States, and Section 18 Article II. of the Constitution of the State of Oklahoma prohibiting the imposition of excessive fines.

XIII.

The premises considered your Orator prays that the defendant Bill Cross, Secretary of State of Oklahoma, and the Defendant Leo Meyer, Assistant Secretary of State and Acting Secretary of State, be forever enjoined and restrained from forfeiting or revoking, declaring forfeited or revoked, or attempting to forfeit or revoke, the authority or charter of your Orator to carry on its business as a common carrier in the State of Oklahoma, or from taking any proceedings against your Orator under the terms and provisions of the said Act of the Legislature of Oklahoma, approved May 26, 1908, as aforesaid; that said Act of May 26, 1908, of the Legislature of the State of Oklahoma be declared unconstitutional, unenforceable and not binding upon your Orator, and that the defendant Bill Cross Secretary of State of Oklahoma, and the Defendant Leo Meyer, Assistant and Acting Secretary of State, their agents, assistants and successors in office be forever restrained and enjoined from enforcing or attempting to enforce the provisions of said Act by at-
58 tempting to deny to your Orator the right to carry on the business of a common carrier in the State of Oklahoma; and

that the said instrument of writing, or declaration of forfeiture, signed and issued by the said Secretary of State, through the defendant Leo Meyer, Acting Secretary of State, dated the 29″ day of August, 1908, hereinbefore set forth, be declared null and void, and as wholly inoperative in any manner at any time to affect the right of your Orator to carry on its business as a common carrier within the said State of Oklahoma.

And your Orator further prays that in the mean time, and until the hearing hereof, your Orator have a temporary restraining order embracing and including all of the relief herein prayed for, such restraining order to continue in force until the termination of the hearing for a perpetual order and until the further order of this Court. And may it please your honors to grant unto your Orator a writ of subpœna issued out of and under the seal of your Honorable Court, directed to the said defendants, Bill Cross, Secretary of State of Oklahoma, and Leo Meyer, Assistant and Acting Secretary of the State of Oklahoma, commanding them, on a certain day therein to be named, and under a certain penalty, personally to be and appear before your Honors in this Honorable Court, and then and there full, true and perfect answer make to all and singular the premises, but not under oath, answer under oath being expressly waived, and to stand ready to perform and abide by such further orders, direction and decree therein as to your Honors shall seem meet, and shall be agreeable to equity and good conscience.

FLYNN & AMES,
Attorneys for Complainant.

59 STATE OF OKLAHOMA,
County of Oklahoma, ss:

I, C. B. Ames, upon oath say that I am Attorney, for the St. Louis and San Francisco Railroad Company, Complainant in the above entitled bill, and as such am authorized to make this affidavit. I have read the foregoing bill of complaint and know the allegations thereof, and know the same are true of my own knowledge, except to those matters therein stated upon information and belief, and as to those matters I believe them to be true.

C. B. AMES.

Subscribed and sworn to before me this 21st day of December, 1908.

My commission expires Jan'y 7, 1911.

[SEAL.] THEODORE ENDERLINE,
Notary Public, County of Oklahoma, State of Oklahoma.

Endorsed: No. 278. St. Louis and San Francisco Railroad Company, Complainant, v. Bill Cross, Secretary of State of the State of Oklahoma, and Leo Meyer, Ass't Sec'y of State and Acting Sec'y of State of Oklahoma. Amended Bill of Complaint. Filed Dec. 22, 1908. Harry L. Finley, Clerk.

60 In the Circuit Court of the United States for the Western District of Oklahoma.

In Equity.

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY, a Corporation, Complainant,

vs.

BILL CROSS, Secretary of State of the State of Oklahoma, and LEO MEYER, Assistant Secretary of State and Acting Secretary of State of the State of Oklahoma, Defendants.

Demurrer to Amended Bill of Complaint.

The joint and several demurrer of Bill Cross, Secretary of State of the State of Oklahoma, and Leo Meyer, Assistant Secretary of State and Acting Secretary of State of the State of Oklahoma, the defendants above named.

These defendants respectively, by protestation, not confirming or acknowledging all or any of the matters and things in the said Plaintiff's amended bill to be true in such manner and form as the same are therein set forth and alleged, demurs thereto, and for cause of demurrer shows:

1. That the subject of the suit is not within the jurisdiction of equity.

2. That plaintiff is not entitled to the relief prayed.

61 3. That said plaintiff has not in and by said amended bill made or stated any such cause as doth or ought to entitle *him* to any such relief as is thereby sought and prayed for from or against these defendants or either of them.

Wherefore, and for divers other good causes of demurrer appearing in said bill, these defendants, respectively demurs thereto, and humbly demands the judgment of this court whether they or either of them shall be compelled to make any further or other answer to said amended bill, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

BILL CROSS,
Secretary of State, and
LEO MEYER,
Asst. Secretary of State,
By CHAS. WEST,
Attorney General, and
W. C. REEVES,
Asst. Att'y Gen'l.

WESTERN DISTRICT OF OKLAHOMA,
County of Logan, ss:

Leo Meyer makes solemn oath and says that he is one of the above named defendants; that the foregoing demurrer is not interposed for delay, and that the same is true in point of fact.

LEO MEYER.

Subscribed in my presence and sworn to before me this 12th day of January, A. D. 1909.

ALFARETTA JENNINGS,
[SEAL.] *Notary Public.*

My Commission Expires March 26, 1912.

I hereby certify that in my opinion the foregoing demurrer
62 is well founded in point of law.

CHAS. WEST,
Attorney General of Oklahoma and Counsel for Defendant.

Service of the within and foregoing demurrer is accepted and receipt of copy thereof is acknowledged this 13th day of January, A. D. 1909, and we hereby stipulate that said demurrer may be filed out of time, on or before January 15th, 1909.

FLYNN, AMES & CHAMBERS,
Attorneys for Plaintiff.

Endorsed: No. 278. In the Circuit Court of the United States for the Western District of Oklahoma. St. Louis and San Francisco Railroad Company, Complainant, vs. Bill Cross, Secretary of State, et al., Defendants. Demurrer to Amended Bill of Complaint. Filed Jan. 14, 1909. Harry L. Finley, Clerk, by Guy R. Gillett, Dep'y. Chas. West, Attorney General, Att'y for Defendants.

63 In the Circuit Court of the United States for the Western District of Oklahoma.

No. 278. In Equity.

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY, a Corporation, Complainant,

vs.

BILL CROSS, Secretary of State of the State of Oklahoma, and LEO MEYER, Assistant Secretary of State of the State of Oklahoma, Defendants.

On Demurrer to Amended Bill.

The amended bill contains allegations, as follows:

That the complainant is a corporation organized and existing under the laws of the State of Missouri and a citizen of that state, and that the defendants are citizens of the Western District of the State of Oklahoma; that the matters in dispute exceed $5,000.00, exclusive of interest and costs, and that the cause arises under the Constitution and laws of the United States; that the complainant has for several years owned and operated and now owns and operates a system of railroads as a common carrier of freight, passengers and mail between, in and through, the states of Missouri, Kansas, Oklahoma, Arkansas, Tennessee, Mississippi, and Alabama; that the portion of said railway system in Oklahoma is composed of sixteen lines

of railway, of the aggregate length of fifteen hundred miles, which were constructed between certain named termini by other railroad companies, under and by the authority of and in compliance with certain designated Acts of Congress and the statutes of Oklahoma Territory (some of the lines being located in both Oklahoma and Indian Territories and others in each of them) and thereafter with all of their property, franchises, etc., acquired by the complainant by deeds of conveyances (two of them being made by purchasers
64 at foreclosure sales, twelve by the original companies, and two by intermediate grantees, in one instance a lease being made) all prior to the admission of the state, and at all times since so acquired forming a part of a continuous and connecting line of interstate railway, on which since completion and acquirement by complainant it has been carrying interstate and intrastate commerce and the mail; that by the laws of Congress and the Territory of Oklahoma and said conveyances, valid contracts were made whereby the complainant acquired the right to operate and maintain said railroads; that the laws of Congress and the Territory of Oklahoma invited the investment of capital in railroad enterprises, and that pursuant to the invitations, offers and conditions contained in such laws, the complainant has invested many millions of dollars in these railroads, its property being assessed for the current year at $47,266,-311.00; and that by virtue of such laws and the investments thereunder, the complainant has acquired the right by contract to continue to own, maintain, operate, and enjoy such railroads and possess and enjoy the rights of a common carrier of interstate and intrastate commerce as well as all the rights, privileges and franchises of corporations organized under the laws of the Territory of Oklahoma; that not being so required, complainant has not procured a license from the Territory or State of Oklahoma to transact business in the state, but has carried on its business as such common carrier in the state under the authority of the laws in force at the time of the organization of the state (on November 16, 1907) and the constitution of the State, so far as applicable.

That in a civil action instituted against it in the District Court of Comanche County, in this State, for the recovery of damages sustained prior to the admission of the state, the complainant filed a petition with bond, for the removal of the action to the circuit court for this district, and that the presiding judge of the state court certified the fact to the Secretary of State, whereupon, the defendant, Leo Meyer, Acting Secretary of State, after this suit was be-
65 gun in this court, signed an instrument as follows:

"STATE OF OKLAHOMA:

Revocation of Charter of St. Louis & San Francisco Railroad Company in Oklahoma.

GUTHRIE, OKLAHOMA, *August 29th*, 1908.

STATE OF OKLAHOMA,
Comanche County:

In the District Court.

GERTRUDE GOODE, Administratrix of the Estate of Frank R. Goode, Deceased, Plaintiff,
vs.
ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, a Corporation, Defendant.

Petition for Removal and *to the Circuit Court of the United States.*

Having received due and legal notice from J. T. Johnson, Judge of the District Court of Comanche County, that the above named corporation defendant, St. Louis & San Francisco Railroad Company has filed a petition for removal to the United States Court, a certified copy of which is on record in the office of the Secretary of State at the Capital in the City of Guthrie in the State of Oklahoma.

Therefore, I, Leo Meyer, Assistant Secretary of State and now Acting Secretary of State of the State of Oklahoma by authority invested in me under section four of House Bill #131 approved by the Governor of the State of Oklahoma, C. N. Haskell, May 26th, 1908, do hereby declare the license of the said St. Louis & San Francisco Railroad Company to transact business in the State of Oklahoma forfeited and revoked.

In testimony whereof, I have set my hand and cause to be affixed the great Seal of the State.

Done at the city of Guthrie this twenty ninth day of August, A. D. 1908.

[SEAL.] LEO MEYER,
Acting Secretary of State."

That the defendants have by said instrument attempted to declare the charter and authority of complainant to do business within the State of Oklahoma to be revoked and forfeited, and since the date of the instrument have been and are threatening and attempting to deprive it of the right to do business in the state under and by virtue of the legislative act of the State, approved May 26, 1908, and that the effect of that instrument, unless declared void and the proposed action of the defendants in attempting to
66 enforce the provisions of the Act will be to subject complainant to numerous prosecutions and annoying litigation, and

make possible the assessment by various courts of the state of fines, ranging from $1,000.00, to $5,000.00 for each day or part thereof during which complainant transacts business in the state; that the complainant is without remedy at law, and that the injury and damage to result from the enforcement of the Act are irreparable.

The complainant then asserts that the legislative act of the State is void for conflict with the Constitution of the United States on several specified grounds and with the Constitution of the State, and prays a decree enjoining the defendants from forfeiting or revoking, or declaring forfeited or revoked, or attempting to forfeit or revoke its authority or charter to carry on its business as a common carrier in the State, declaring the legislative act void and ineffective as to complainant and the instrument signed and issued by the defendant Leo Meyer, Acting Secretary of State null and void and inoperative as to the right of complainant to carry on such business in the State.

The legislative act of the state complained of is as follows:

"An Act fixing the domicile of persons, firms, and corporations transacting business within the State of Oklahoma; providing for forfeiture and revocation of license to transact business in the State upon the filing in any court of record, claim or declaration of domicile in another State or foreign country; the duty of judges relative thereto; and providing penalty for transacting business after revocation of license.

Be it enacted by the people of the State of Oklahoma:

SECTION 1. That the domicile of every person, firm or corporation conducting a business in person, by agent, through an office, or otherwise transacting business within the State of Oklahoma, and which has complied with or may comply with the Constitution and laws of the State of Oklahoma, shall be for all purposes deemed and held to be the State of Oklahoma.

SEC. 2. That the license or charter to do business within the State of Oklahoma of every person, firm or corporation conducting a business in person, by agent, through an office or otherwise transacting business within said State of Oklahoma, who shall claim or declare in writing before any court of law or equity within said State of Oklahoma, domicile within another State or foreign country, shall, upon such declaration be immediately revoked.

SEC. 3. That is shall be the duty of the Judge of any court in which any declaration or claim of domicile within another
67 State or foreign country, is filed, to report to the Secretary of State and to furnish said Secretary of State with an authenticated copy of any claim or declaration in writing made or filed, declaring domicile within another State or foreign country.

SEC. 4. That the Secretary of State immediately upon the receipt of the copy of the claim or declaration of any person, firm, or corporation as aforesaid, shall declare the license or charter of any person, firm or corporation so filing said claim or declaration, forfeited and revoked.

SEC. 5. That any person, firm or corporation conducting a busi-

ness in person, by agent, through an office, or otherwise transacting business within the State of Oklahoma, whose license to do business within said State of Oklahoma shall have been revoked as aforesaid, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than one thousand dollars ($1,000.00) nor more than five thousand dollars ($5,000.00) for each day or part thereof they shall so conduct a business after the revocation of their license to do business within this State as aforesaid.

SEC. 6. Nothing in this act shall be construed to allow any corporation organized under the law of any other State, Territory or foreign country to exercise the right of eminent domain in the State of Oklahoma.

SEC. 7. An emergency is hereby declared to exist, whereby the immediate passage of this act is declared necessary for the preservation of the public peace, and safety, and this act shall be in full force and effect upon its passage and approval.

Approved May 26, 1908."

W. F. Evans, Flynn, Ames & Chambers, and R. A. Kleinschmidt, for complainants.

Charles West, Attorney General of the State of Oklahoma, M. Fulton and Charles Mitscrich, for defendants.

Opinion.

JUNE 4, 1909.

JOHN H. COTTERAL, *District Judge:*

The question of the jurisdiction of this court calls for first consideration. It must be held that diversity of citizenship is sufficiently alleged. The complainant is incorporated under the laws of the State of Missouri, and the defendants are citizens of the State of Oklahoma. The first section of the legislative act by its terms fixes the domicile in the State of every corporation transacting business in the state which complies with its constitution and laws. It is not clear whether the complainant has complied therewith.

If it be assumed that it has done so, as contemplated in this
68 Act, still it remains a foreign corporation so far as the jurisdiction of the federal courts is concerned. A similar statute was construed in the case of Southern Railway Co. vs. Allison, 190 U. S., 326, where it was held that by compliance with the same a corporation "may be made what is termed a domestic corporation, or in form a domestic corporation," but that it does not thereby become a citizen of the state "so far as to affect the jurisdiction of the Federal Courts upon a question of diverse citizenship."

But it is insisted that the domestication of the complainant was affected by virtue of its consolidation with one or more of the lines of railroad now a part of its system and the formation of a new corporation, under the statutes of the Territory of Oklahoma. (Wilson's Anno. & Rev. Stat., 1903). If the complainant became a corporation of the Territory, it is a corporation of the State. Kans. Pac. v. Atchison R. R. 112 U. S., 414. The fact alleged

is that the complainant acquired this property by means of deeds of conveyance, after the adoption of Section 1067 of those statutes in 1899. Section 1028 was adopted in 1890. The argument is that both sections should be construed together and that they authorize consolidation and the formation of a new corporation only, and that this was the necessary result of the transfers. Section 1028 provides that a railroad corporation may consolidate its stock, franchises and property with any other railroad corporation, whether within or without the Territory, when they can be lawfully connected and operated together, etc., upon agreed terms by any name selected, which within the Territory shall possess all the powers, franchises and immunities, and be subject to all the liabilities, etc., of domestic corporations, etc., the articles to be approved by the vote or assent of stockholders as specified, and a copy of the articles and the record of the proceedings to be filed with the Secretary.

It further provides that any railroad corporation whose line
69 is wholly or in part within the Territory, whether chartered by or organized under the laws of the Territory, or of any state or territory, or of the United States, may lease or purchase and operate the whole or any part of any other railroad together with the franchises, powers, etc., when the roads may be lawfully connected or operated together, constituting a continuous line, etc., provided, that the capital stock of the company formed by such consolidation shall not exceed the sum of the capital stock of the consolidating companies at par value, etc. Section 1067 provides that any railroad company owning any railroad in the Territory (the words "and any railroad company organized under the laws of this Territory owning a line of railroad either within or without the Territory" being added by the amendment of 1901), may sell or lease its railroad, etc., or any interest therein, with all the property, rights, privileges and franchises thereto pertaining to any other railroad company of the Territory, or of any state or territory, or of the United States, the lines being continuous, etc., "which such purchasing or leasing company shall have the right by contract or otherwise when completed to use or operate," and that any railroad company of the Territory or of any State or Territory or of the United States, purchasing or leasing a railroad in the Territory "shall possess and enjoy all the rights, powers, privileges, franchises conferred by the laws of this Territory upon a railroad corporation formed thereunder." It is not apparent why the two sections, even if they should be treated as parts of one Act, do not provide for different transactions, one a consolidation of railroad property and the formation of a new local corporation, and the other a conveyance of the railroad property, franchises, etc. That each may be separately accomplished cannot be gainsaid; and if so, it seems clear that this is what the legislature intended. No reason appears for the additional legislation contained in section
1067, if only consolidation and a new corporation were to
70 be authorized, because section 1028 is complete in its terms.

But section 1067 is silent as to any consolidation or merger, and as to any dissolution, or abandonment of corporate existence

of the former corporations, providing practically for the transfer and right of operation, etc., and is likewise complete. With respect to the claim of a different meaning, it may be said to be equivalent to the statute construed in the case of St. Louis & San Francisco Ry. v. James, 161 U. S., 545, where it was held that a purchase under its provisions "by the Missouri corporation did not convert it into an Arkansas corporation." See Louisville & Ry. Co. v. Louisville Trust Co., 174 U. S., 552. The theory that a consolidation was made and a new corporation was formed by these transfers of the railroad property, franchises, etc., cannot be accepted.

However, complainant sets out another independent ground of jurisdiction—a controversy arising under the constitution and laws of the United States. City Railway Co. v. Citizens R. R. Co., 166 U. S., 557. Upon either ground, that is, diverse citizenship, or a controversy arising under the Federal Constitution or laws an amount in dispute, exceeding $2,000.00 exclusive of interest and costs, being also alleged, the case falls within the provisions of the Judiciary Act of August 13, 1888, 25 Stat. 433, U. S. v. Sayward, 160 U. S., 493.

The State being entitled to immunity from suit, objection is made to the jurisdiction of the court on the ground that the suit is one against the state. The question whether when state officers are defendants, the suit is against the state has been the subject of frequent decision by the courts. The only difficulty in a given case lies in the application of the principles which have been judicially settled. The test is not always whether the state is named as a party. It may virtually be the real party, if its officers are sued as representing the state's action or liability. In such case, or where the officers
71 proceeded against are charged with no duty relative to the statute which is assailed, the suit may not be maintained. But where the officers, under color of an unconstitutional statute, or assuming to proceed under a valid law but going beyond the powers thereby conferred, threaten to commit an act of wrong and injury to the rights and property of another, a suit to enjoin them is not a suit against the state. Pennoyer v. McConnaughey, 140 U. S., 10. Reagan v. Farmer's L. & T. Co., 154 U. S., 362, Smith v. Ames, 169 U. S., 466. Fitts v. McGee, 172 U. S., 516. Ex parte Young, 209 U. S., 123. The same objection was overruled in the recent cases of C. R. I. & P. Ry. Co., Ludwig, 156 Fed., 152 and C. R. I. & P. Ry. Co. v. Swanger, 157 Fed., 783. The authorities justify the conclusion that the suit is not one against the State; and the holding of this court will be to that effect.

It will be observed that the forfeiture and revocation provided by the legislative act are rested upon but one cause—the fact of a written declaration in a court of the state of a domicile in another state. Evidently, the act is aimed against the removal of causes from the state courts to the federal court on the ground of diversity of citizenship, because it is based on the assertion in court of a fact necessary to secure such removal. This is conceded. But does such removal of a case to a federal court furnish any justification for the

consequences of the act? It is claimed, in substance, as understood by the court, that the act is a rightful exercise of police power, based not on any specific authority to that effect, but upon precedents declaring analogous principles; and that inasmuch as residents and non-residents had in the former territories the right of litigation only in the courts thereof—in the Indian Territory in the United States courts and in Oklahoma Territory in the Territorial courts, no right of removal being there enjoyed, the state could, on a basis of non-discrimination, by this means, put all litigants on a parity and confine their litigation to its courts. The police power
72 of the state, it is true, is a broad and extensive power. It is the power "to prescribe regulations to promote the health, peace, morals, education, and good order of the state, develop its resources and add to its wealth and prosperity." Barbier v. Connelly, 113 U. S., 27. But plainly the notion that the subject of federal jurisdiction is within the limits of that power is a mistake. The right to resort to the jurisdiction of the federal courts, including the right of removal thereto, is a constitutional right conferred by the Federal Constitution and the laws of Congress enacted in pursuance thereof. It is an absolute right that cannot be impaired or abridged by any statute of a state. Barrow Steamship Co. v. Kane, 170 U. S., 100. Butler Bros. v. U. S. Rubber Co., 156 Fed., 15. The right to litigate in the Federal courts of this state has no qualification annexed, but it is the same as in the other states. Enabling Act, June 16, 1906, sec. 13. And furthermore, it is competent for Congress in exerting its constitutional power to vest the federal courts of a state with the jurisdiction of proper cases theretofore pending in the territorial courts. Koenigsberger v. Richmond, 158 U. S., 48. The supposed cause assigned in the Act is therefore quite the opposite of any support for its operation.

Nor is the legislative act to be vindicated upon any reserved power of repeal of former legislation. It is quite unnecessary to consider whether, or to what extent any such power may be vested in the legislature, inasmuch as it has not attempted to act in the only manner given to it, namely, as "that no injustice shall be done to the incorporators." State Constitution, Art. IX, sec. 47. Vicksburg v. Vicksburg Water Works Co., 202 U. S., 453. Noble State Bank v. Haskell (Ok.) 97 Pac., 602.

It is therefore to be determined whether the Act may be upheld against the complainant upon the ground which is insisted
73 upon that it is a proper exercise of discretionary legislative power. Undoubtedly, it is a general rule that foreign corporations enter a state to carry on business therein by comity only, and that a state may at will exclude them, admit them on conditions, or terminate its permission once given to continue such business. In the cases of Doyle v. Insurance Co., 94 U. S., 535 and Security Mut. Life Ins. Co. v. Prewitt, 202 U. S., 246, it was held that while a state may not exact in advance an agreement from a foreign insurance corporation that it will not remove a case to the federal court, yet it may make such removal the contingency upon which the expulsion is to take place. In the latter case it was said:

"A state has power to refuse permission to a foreign insurance company to do business at all within its confines, and as it has power to withhhold that permission once given, without stating any reason for its action, the fact that it may give what some may think a poor reason or none for a valid act is immaterial."

But that there is an important qualification on the legislative power of a state in dealing with foreign corporations is pointed out in the former case, where it was said:

"No right of the complainant under the laws or the constitution of the United States, by its exclusion from the state is infringed; and this is what the state now accomplishes. There is nothing, therefore, that will justify the interference of this court."

By the Constitution of the United States it is provided that no state shall impair the obligation of contracts or deprive any person of property without due process of law. Upon these grounds, among those relied upon, the complainant maintains that the legislative Act enforced against it infringes its Constitutional rights.

The rights asserted by the complainant had their origin prior to the admission of the state. The standing to be accorded those rights is well settled. The Indian Territory was not an organized Territory, but Oklahoma Territory was provided with territorial
74 government by its Organic Act of May 2, 1890. Without question, the United States had entire dominion and sovereignty, national and municipal, and federal and state, over both territories. American Insurance Co. v. Canter, 1 Pet. 511. Shively v. Bowlby, 152 U. S., 48. Mormon Church v. U. S. 136 U. S., 42. And the included legislative power over these territories possessed by the state Congress was authorized to entrust to the territorial legislature, subject to such limitations on its exercise as Congress might impose and to abrogation by it in its discretion. The legislative power of Oklahoma Territory was by section 6 of its Organic Act extended "to all rightful subjects of legislation not inconsistent with the constitution and laws of the United States, etc." That power was co-equal with that of a state within its limits. Simms v. Sims, 175 U. S., 168. In keeping with its authority, Congress could lawfully exercise the power of eminent domain in the Territories and confer upon a corporation of any state or territory the right to construct and operate a railroad within the territories. Cherokee Nation v. Kansas Railway Co., 135 U. S., 6. Van Wyck v. Knevals, 106 U. S., 360. California v. So. Pac. Ry. Co., 127 U. S., 1. St. Paul v. Phelps, 137 U. S., 528. A state constitution is itself a law within the meaning of the contract clause of the Federal Constitution. New Orleans Gas Co. v. Louisiana Light Co., 115 U. S., 672. Fisk v. Jefferson, 116 U. S., 133. The State of Oklahoma, organized upon the domain of the two territories, has provided by its constitution that existing rights and contracts shall continue unaffected by the change in the forms of government. Schedule, sec. 1. The rights and contracts so far as shown by the complainant and originating before the admission of the state must be considered as preserved thereafter in their original integrity. Trustees of Vincennes

v. State, 14 How. 263. Rogers v. Burlington, 3 Wall., 663. Smith v. Atchison, 64 Fed., 272.

75 By certain Acts of Congress a portion of the original constructing companies were granted the right to acquire and appropriate rights of way and to build, maintain and operate their railroads, or were granted rights of way for the purpose of exercising those rights. Terms and obligations were imposed by these Acts which are variant and not common to all, but among them may be mentioned special regulations respecting the acquirement of rights of way and payment therefor, obligations in the way of payments to Indians, liability to taxation for their benefit by Congress and the state, regulations with respect to transportation privileges and charges, local and foreign, crossings, carriage of the mails, etc. The rights of the remaining companies accrued under the laws of Oklahoma Territory, which extended generally the authority to construct and operate connecting railroads. Upon the faith of these laws, which were duly accepted, great outlays of capital were made in building and equipping these lines, the railroad property being largely permanent and immovable and the use of the property being its chief value—a component part of it and inseparable from it. By the laws of Oklahoma Territory also the purchase of railroads and franchises and the operation of such railroads by both domestic and foreign companies with connecting lines were expressly authorized. In the most of the cases, the original Acts of Congress, by direct and indirect provisions, authorized the transfer of the corporate property and franchises of the constructing companies in the Indian Territory. It is alleged that these various lines with the accompanying franchises were transferred to the complainant and that the purchases were made in consideration of great investments of capital, pursuant to the invitations, offers and conditions of the

76 federal and territorial laws. There is controversy relative to the legislative authority for the sale and purchase of a part of the property and franchises of the constructing companies in the Indian Territory, but none in Oklahoma Territory. Such Controversy, however, need not be entered upon or decided. The proposal of the defendants under the legislative act here assailed is to put an end to the entire right of the complainant to carry on business in the state. If the complainant has any right to continue business in the state, a case has been stated for relief. So far, therefore, as the complainant relies upon an impairment of contract obligations, such controversy may be eliminated.

In view of the legislation and transactions referred to, did complainant secure a "license or charter" for the conduct of railway operations within the State, of such character that it was subject to forfeiture and revocation by the legislature at will without any cause, resulting in a great depreciation of the railroad property and visiting an enormous loss upon all holdings and interests therein, and at the same time working an incalculable inconvenience and injury to the public, desirous or in need of the facilities of railway transportation and travel over this railroad in the state? Or did complainant enter into such contracts now binding upon the state

that the proposed termination of its right to continue its railway business and the use of its property within the state infringes its constitutional rights by impairing the obligations of those contracts and depriving it of its property without due process of Law?

Whether the complainant be considered as having succeeded by transfer to direct grants made to the original companies of the right to construct, own and operate their railroads and standing precisely in their relation to the state, or as having accepted and made its investments upon the faith of the proposals extended generally or specially by statutes conferring the same right upon it as a purchasing company is not of consequence. In the light of the authorities the same result was accomplished and contracts were made. As was said in the case of Reagan v. Farmer's L. & T. Co., 154 U. S. 392:

77

"In the famous Dartmouth College case, 4 Wheaton, 518, it was held that the charter of a corporation is a contract protected by that clause of the National Constitution, which prohibits a State from passing any law impairing the obligation of contracts. The International and Great Northwestern Railroad Company is a corporation created by the State of Texas. The charter which created it is a contract whose obligations neither party can repudiate without the consent of the other. All that is within the scope of this contract need not be determined. Obviously, one obligation assumed by the corporation was to construct and operate a railroad between the termini named; and on the other hand, one obligation assumed by the state was that it would not prevent the company from so constructing and operating the road."

And in the case of New Jersey v. Yard, 95 U. S., 104.

"Unless forbidden by some exceptional constitutional provision, the same authority which can make a law can repeal it. The Constitution of the United States has imposed such a limitation upon the legislative power of all the states by declaring that no state shall pass any law impairing the obligation of a contract * * * It has become the established law of this court that a legislative enactment, in the ordinary form of a statute, may contain provisions which, when accepted as the basis of action by individuals or corporations, become contracts between them and the state within the protection of the clause referred to of the Federal Constitution."

In the case of Home of the Friendless v. Rouse, 75 U. S., 430, where it appeared that in order to encourage the establishment of a charitable institution it was provided by the statute creating it that its property should be exempt from taxation, and under a subsequent provision of the Constitution of the State, a levy for taxes was about to be made, it was held

"There is no necessity of looking for the consideration for a legislative contract outside of the objects for which the corporation was created. These objects were deemed by the legislature to be beneficial to the community, and this benefit constitutes the consideration for the contract, and no other is required to support it * * * We are of the opinion that the State of Missouri did make a contract on sufficient consideration with the Home of the Friendless,

to exempt the property of the corporation from taxation, and that the attempt made on behalf of the state through its authorized
78 agent notwithstanding this agreement to compel it to pay taxes, is an indirect mode of impairing the obligation of the contract, and cannot be allowed."

In the case of Powers v. Detroit & Grand Haven Ry., 201 U. S., 559, a statute of Michigan was upheld which limited the taxes upon a railroad. The court said:

"Surely no clearer case of contract can be presented than one in which a legislature passes an act in respect to a particular corporation making special provision concerning taxation, and does so with a view of inducing large expenditures by the corporation and the completion of an unfinished road, whose completion is deemed of great importance, and where the special provision is, as required, formally accepted, the expenditure made and the road completed."

In the case of Erie Railroad v. Pennsylvania, 153 U. S., 642, the Railroad Company, incorporated in New York, was by the Acts of 1841 and 1846, of Pennsylvania, granted the authority to build partly in Pennsylvania its line projected from New York to Lake Erie, and certain terms, conditions, payments and taxes were imposed. By the laws of 1885, Section 4, an additional tax on its indebtedness to residents of the state was required, and the Supreme Court of the United States, reversing a judgment of the State court upholding this tax, held:

"We are of the opinion that the fourth section of the laws of 1885, in its application to this railroad company, impairs the obligation of the contract between it and Pennsylvania, as disclosed by the acts of 1841 and 1846, and by what was done by that company upon the faith of those acts. * * * Consistently with those terms and conditions, Pennsylvania cannot withdraw the assent which it gave, upon a valuable consideration, to the construction and operation of the defendant's road within its limits. Nor can the right of the company to enjoy the privileges so obtained be burdened with conditions not prescribed in the acts of 1841 and 1846, except such as the state, in the exercise of its police power for purposes of taxation, and for other public objects, may legally impose in respect to business carried on and property situated within her limits."

In American Smelting Co. v. Colorado, 204 U. S., 103, the company, a corporation of New Jersey, had paid the fees required by the laws of the state of foreign corporations, as a condition precedent to transacting business in the state, and by those laws they were subject to the same liabilities as domestic corporations. It then made an investment of $5,000,000.00. Later, an additional tax was imposed upon foreign corporations, which this Company re-
79 sisted, and a judgment of forfeiture therefor, affirmed by the supreme court of the state, was reversed by the Supreme Court of the United States, where it was held that the Company obtained the right to enter and do business in the state, and that it was not a mere license to do so "liable to be revoked or the sum increased at the pleasure of the state, without further limitation. It was a clear contract that the liabilities, etc., should be the same as

the domestic corporation, and the same treatment in that regard should be measured out to both," and that the later act impaired the obligation of that contract.

In Chicago, R. I. & P. Ry. Co. v. Swanger, 157 Fed., 783, it appeared that by the laws of the state railroad corporations of adjoining states were authorized to build or acquire continuous lines in the state and were to be subject to the same regulations as corporations of the state. A later Act was passed which provided that if a railway corporation doing business between points in Missouri should without the consent of the other party remove a case from a state court to an United States Court, its license to do business in the state should be forfeited and penalties added. The court said:

"It is stoutly denied that there is any contract, and, of course, there must be a contract before the obligation of one can be impaired. What was the contract? The state gave it the power of eminent domain. In many instances it gave it pecuniary aid. It gave it the rights of a common carrier. It gave it the right to charge reasonable prices for its services. It promised it the equal protection of the laws as to taxation, and equal protection with others against all who might seek to injure its property or earning power. The state in effect said: 'Make your investments, and we will give you these rights.' The company accepted the offer and made the investments, and now cannot remove if it so desired, because it has a contract in perpetuity to serve the people as a common carrier and to give efficient service for reasonable remuneration. That there is a contract is easily discerned."

According to the principles of the adjudged cases, while they differ in their facts, it is established that by the purchase
80 of these railroads, pursuant to the laws applicable and upon the terms, obligations and considerations shown, contracts were made, obligations of which are that the state, succeeding to the domain of the Territories, should respect and not destroy the vested right of the complainant to the use and benefit of its property in carrying on its railroad operations within the state and should not vary the terms of the exercise of that right beyond the legitimate scope of its police powers.

The act, so far as it has application to the complainant, proposes the revocation and forfeiture of valuable rights and privileges amounting to franchises. There being, as already shown, an absence of legislative power reserved or properly exercised to that end, this could not be accomplished by legislative declaration, and in no event except upon adequate grounds, by judicial proceedings regularly instituted for that purpose; and it is not the subject of collateral inquiry. 2 Clark & Marchall, Pri. Corp., sec. 313. 1 Elliott on Railroads, secs. 47, 48, 55. It is clear therefore, that the enforcement of the Act against the complainant would not only impair the obligations of contracts, but also deprive it of its property without due process of law.

The complainant challenges the Act for other reasons. It is asserted that it is an interference with interstate commerce—a subject committed by the Federal Constitution to Congressional regulation.

The language of the Act confines its operation to "transacting business within said State of Oklahoma." If it extends to the interstate transactions of the complainant, it must necessarily be void in that respect. Butler Bros. v. U. S. Rubber Co., supra. The rule is that every reasonable construction should be given to an act to save it from being unconstitutional. Hooper v. California, 155 U. S.,
81 648. And although interstate commerce may be in part carried on within a state, a reasonable construction of the Act would limit its meaning to intrastate commerce alone. Chesapeake v. Kentucky, 179 U. S., 388. But by holding that the Act relates solely to such commerce, it is not aided, as all that has been said has been upon the assumption that it has only such relation.

Further grounds are also urged against the validity of the Act, but a decision thereon is not essential, and for that reason and not for want of merit, they may be withheld from present consideration.

It remains to be determined whether the foregoing propositions are controlling, in view of certain grounds advanced by the defendants in support of a contrary ruling.

The argument is made that because of the public nature of the business of a railway company, it is a joint enterprise, and that the state may deprive it of its public property. The inquiry is submitted: "Why may not the public, a partner in the industry, prohibit the further prosecution of the joint enterprise?" The question has already been answered. The contract relations involved are such that the state is bound to adhere to the obligations imposed by them. A different answer is said to be found in the case of Myers v. Manhattan Bank, 20 Ohio, 302, which is supposed to hold that a state may prohibit foreign corporations in the further use of banking franchise granted before statehood. But that case decided that an act of a voluntary state legislature of Michigan, before the admission of the state, and during the existence of the territorial government, incorporating and authorizing the bank to do a banking business at Manhattan, in Lucas County, was void, and that even if duly incorporated by the law of Michigan, yet the privilege or contract being in conflict with the laws of Ohio, it was not valid therein after
82 the transfer to Ohio of Lucas County.

Another contention of the defense is that as the state has succeeded to the power of eminent domain within its limits, the complainant, not having complied with section 31 of Art. IX of the State Constitution, is excluded from the use and benefit of its right of way. That Section provides that no railroad corporation organized under the laws of any other state or of the United States shall be entitled to the benefit of the right of eminent domain in the state until it shall become a body corporate pursuant to or in accordance with the laws of the state. It is to be assumed that the state has succeeded to this power upon an equality with the other states of the union. Still, the proposition is subject to fatal objections. If there were prior contracts whereby the use and enjoyment of the right of way were vested in complainant, that section, if given the application contended for, would be, as has been shown, obnoxious to the Federal Constitution. But regarding the language of the

section, and in the absence of the expression of a contrary intention, it would seem plainly intended to refer only to future applications for the benefit of the right. Such is the rule of construing constitutions. Cooley, Const. Lim. (7th Ed.) 97. Furthermore, the same constitution declares against the impairment of the obligation of contracts and the taking of property without due process of law, and the foregoing construction must be correct, because, as said by the Supreme Court of Oklahoma (Airie v. State, 100 Pac. R. 23):

83 "The entire instrument is to be examined in arriving at the meaning of any part thereof, and to be construed as a whole. Effect is to be given, if possible, to each section, clause and word; and, if any part be doubtful, it must be interpreted with every fair intendment to harmonize with the main purpose and not

It is also contended that the complainant itself surrendered its right to defeat it."

to carry on interstate or intrastate business by acquiring its railway property from several companies which under a joint ownership by its stockholders ceased to be in active competition for trade and commerce, in violation of the Anti-Trust Act of Congress of July 2, 1890, as applied in the case of Northern Securities Co. v. U. S. 193 U. S. 197, and the anti-trust laws of the state, and that this defense may here be availed of upon the doctrine of the case of Continental Wall Paper Co. v. Voigt, 29 Sup. Ct. Rep. 280. In the former case it was said:

"What the government particularly complains of, indeed, all that it complains of here, is the existence of a combination among the stockholders of competing railroad companies which in violation of the Act of Congress restrains interstate and international commerce through the agency of a common corporate trustee designated to act for both companies in repressing free competition between them."

The contention is not based upon any facts alleged in the amended bill. It does not appear that competitive lines were acquired or that there was any combination of stockholders. There is no occasion to pass upon these purely abstract questions of law upon the subject of either national or state anti-trust legislation.

With reference to the supposed application of section 8 of article IX of the State Constitution, proscribing and limiting the right of foreign and federal corporations to consolidate with, lease or purchase parallel or competing lines, and of section 9 of that article, prohibiting domestic corporations from consolidating with

84 or selling their property to such corporations, it is sufficient to say, without intimating any further opinion, that by the language of those sections and the settled principles of construction, they do not apply to past transactions.

Another contention is that the Congressional Acts which granted the corporate rights to the original companies contained terms relative to maximum transportation charges amounting to conditions, and that the complainant being bound to plead a performance of those conditions, but having departed from such rates and thus violated and forfeited its conracts, has no standing to insist upon them.

Assuming, but not deciding, that these rates have not been superseded by subsequent legislation, it is clear that no burden of pleading an adherence to them can rest upon the complainant, because such an issue could not be inquired into collaterally and hence is no proper subject to be set out in any pleading in this suit.

85 It is also insisted in support of the demurrer that the defendant Meyer actually made the declaration against the complainant, revoking its authority in the state. In the amended bill, it is alleged that the signing of the instrument was "subsequent to the institution of the suit." It bears date one day later than that of the filing of the original bill and of the preliminary order restraining its issuance, but on the day of service of the order. Presumably it was executed before the order became effective or was served. It does not appear that "a foreign domicil" was alleged in the petition for removal or was the ground of the declaration. But assuming that such domicil was alleged and the fact certified to the Secretary as contemplated in the legislative act, still must the relief prayed for be denied because the declaration shortly preceded the time when the order became effective or was served? The point is highly technical and goes to an avoidance of a decision on the merits. It is not available. This court had acquired jurisdiction over the subject matter of the suit before the defendant acted, and he could not therefore prejudice or defeat the rights of the complainant. In such a case, a court of equity has ample "power to compel by mandatory injunction the restoration of the former condition of things," and prevent the gaining of advantage by reason of the wrongful act. 22 Cyc. 743. Ex parte Lennon, 166 U. S., 548. High on Injunctions 4th Ed., sec. 5*a*. Bispham's Prin. Eq. 400. Gibson's Suits in Chancery, sec. 824.

The demurrer will be overruled.

Endorsed: No. 278. St. L. & S. F. R. R. Co., Complainant, vs. Bill Cross, Secretary of State, et al., Defendant-. Opinion on Demurrer to Amend Bill. Filed June 4, 1909. Harry L. Finley, Clerk.

86 In the Circuit Court of the United States for the Western District of Oklahoma.

In Equity.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, a Corporation, Complainant,

vs.

BILL CROSS, Secretary of State of the State of Oklahoma, and LEO MEYER, Assistant Secretary of State and Acting Secretary of State of the State of Oklahoma, Defendants.

Joint Answer of Defendants.

Bill Cross, Secretary of State of the State of Oklahoma, and Leo Meyer, Assistant Secretary of State and Acting Secretary of State

of the State of Oklahoma now and at all times hereafter, saving to themselves all and all manner of benefit or exception and otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer, thereto, or to so much thereof as these defendants are advised is material or necessary for them to make answer to, answering say:

1.

They admit the allegations contained in the first paragraph of the bill.

2.

They admit the allegations of the second paragraph of the bill.

87 3.

They admit the allegations of the third paragraph of the bill.

4.

They deny that the complainant was ever the legal owner or operator of any railroad in the State of Oklahoma; they admit that the complainant attempted to acquire and operate the various railroad properties named in the fourth paragraph of the bill; but these defendants say that the complainant, the Missouri corporation was never authorized by any authority in the Indian Territory to acquire by purchase, lease or consolidation or otherwise, any of the lines named in the fourth paragraph operating in the Indian Territory; and these defendants aver that the complainant, the Missouri corporation, by the laws of Oklahoma Territory was not authorized to acquire any of the lines named in the fourth paragraph of the bill lying in and operated in Oklahoma Territory, except by the incorporation according to law of a consolidated corporation in the Territory of Oklahoma. That the complainant, the Missouri Corporation, either never complied with any of the provisions of the law for the consolidation of a domestic with a foreign railroad in the Territory of Oklahoma, or else, and these defendants aver that it did abandon all or any of its rights, if any, as a domestic Oklahoma incorporated railway corporation, in that in the district court of Oklahoma for the County of Comanche, the said complainant, the Missouri corporation, filed a written statement claiming incorporation outside of the State of Oklahoma and abandoning, and repudiating, and giving up, any rights as a domestic corporation in the State of Oklahoma.

88 And further these defendants deny that the complainant has suffered any injury because of anything done by these defendants or either of them for the reason that all of the properties claimed by the complainant in the State of Oklahoma were therein acquired, owned and operated continuously in violation both of the laws of the United States and of the State of Oklahoma against the formation and maintenance of any combination in the form of trust or otherwise to restrain interstate or intrastate trade or commerce, in this to-wit:

(*a*) St. Louis & San Francisco Railroad Company, and Alabama and Pacific Railroad Company, St. Louis, Oklahoma and Southern Railway; St. Louis & Oklahoma City Railroad Company, Oklahoma City and Western Railroad Company, Arkansas Valley and Western Railroad Company, Ozark & Cherokee Central Railroad Company, Blackwell, Enid and Southwestern Railroad Company, Shawnee, Oklahoma & Missouri Coal and Railway Company, St. Louis & San Francisco Railway Company, Kansas City, Ft. Scott & Memphis Railroad Company, The Kansas City, Ft. Scott & Memphis Railway Company, Arkansas, Northwestern Railway Company, Gulf, Arkansas and Northwestern Railroad Company, The Arkansas and Oklahoma Railroad, The Arkansas and Choctaw Railway Company, St. Louis, San Francisco and New Orleans Railroad Company, The Sulphur Springs Railway Company, and Kansas, Oklahoma & Gulf Railway Company, incorporated and organized under the laws of one or more of the states or territories of the United States at the times named in the bill, are now common carriers employed in the transportation of freight and passengers among the several states of the United States, and between said states and foreign
89 nations and through portions of the State of Oklahoma; and as such carrier so employed, were and are engaged in trade and commerce among the several states and foreign nations and in trade and commerce in this state.

(*b*) That prior to the 16th day of November,, 1907, and on various dates set out in the bill, St. Louis & San Francisco Railroad Co., — Carleton, whose christian name is unknown, B. F. Yoakum, and Breckinridge Jones, and certain other persons whose names are unknown, referred to as "— Carleton, B. F. Yoakum, Breckinridge *H*ones and others, and their associate stockholders," owned and controlled a majority of the capital stock of the complainant and of each and all of the railway corporations herein named, and that together with other persons, whose names are unknown but who owned and controlled and were stockholders in the capital stock of the various corporations herein named, the defendants do not know how many of said railways and said persons own stock in or whether one person owns stock in more than one of the same, but asserts that said persons, — Carleton, B. F. Yoakum and Breckinridge Jones, with their associates are actually the controlling force in the management and ownership of all of the said railway companies, and were also the owners and controllers of a majority of the capital stock of the complainant, the St. Louis & San Francisco Railroad Company, together with all its subsidiary lines and systems.

(*c*) That each of the other railway companies, except the complainant, St. Louis & San Francisco Railroad Company, were, or ought to be, at the time is was given whatever rights it had mentioned in this suit, independent and separate railroads, parallel and competing with the lines of the St. Louis & San Francisco Railroad,
90 running in a general direction from the southwest to the northeast, from the northern portions of Texas through the State of Oklahoma, and what was then the Territory of Oklahoma,

and the Indian Territory, the State of Arkansas, the State of Kansas, the State of Missouri and the state of Illinois to Chicago; that many lines crossed the said general direction from the southwest to the northeast, and as they were originally built said lines furnished competing and various parallel lines of exit and entrance from and into the State of Oklahoma and between the various communities therein, thus furnishing to the people two or more parallel and competing lines from the southwest portion thereof to the northeast portion of the State of Oklahoma, and from Texas into and towards Missouri and Illinois, with connections leading to the Atlantic Seaboard from Chicago, St. Louis, Birmingham and other points furnishing a complete network of lines to drain the trade of the State of Oklahoma and Missouri and the Mississippi Valley northward to Chicago and southward to Birmingham, and at said points to import into the state of Oklahoma and said Mississippi Valley and its tributaries from the north and west and southwest, and at the same time to carry the production of the State of Oklahoma and the Mississippi Valley and its tributaries southwest to connecting carriers in Louisiana and Texas to the ports of Galveston and New Orleans, and in the State of Oklahoma, affording very many of the chief cities therein and throughout many of the localities and communities thereof, competing lines of transportation both northeast, southward and eastward, to-wit, as an instance thereof:

From Vernon, Texas, northwest to Enid, Oklahoma, where the lines of the Blackwell, Enid & Southwestern which taken in
91 connection with the lines of the Kansas, Oklahoma and Gulf Railroad, running from Enid to Beaumont, Kansas, is parallel with throughout the whole of its course and competing with the lines of the Oklahoma City and Western Railroad from Quanah, Texas, to Oklahoma City; and the St. Louis and Oklahoma City Railroad Company from Oklahoma City to Sapulpa and thence by the lines of the St. Louis & San Francisco Railroad to Tulsa, and thence to Monett, Missouri, where the lines of the St. Louis & San Francisco Railroad Company from Ellsworth, Kansas, pass through Beaumont, Kansas, to connect at Monett, Missouri, with the other lines named; the line of the St. Louis & San Francisco Railroad Company going from Ellsworth, Kansas, through Beaumont, Kansas, to Monett, Missouri, are competing and parallel with the lines of the Arkansas Valley and Western Railroad Company from Avard, Oklahoma, through Enid, Oklahoma, to Tulsa, and from thence to Monett, Missouri; the lines of the St. Louis and San Francisco Railroad from Monett, Missouri, through Ft. Smith, Arkansas, through Hugo, Oklahoma, to Paris, Texas, are parallel with and competing with the lines of the St. Louis and San Francisco Railroad Company from Monett, Missouri to Sapulpa, Oklahoma, and thence by the lines of the St. Louis, Oklahoma and Southern Railway Co., from Monett, Missouri, through Ada, Oklahoma, to Sherman, Texas; And said last named line is parallel with and competing with the lines of the St. Louis and Oklahoma City Railroad Company from Quanah, Texas, to Sapulpa, Oklahoma; that the said lines of the Frisco System from Hope, Arkansas, by the Arkansas

and Choctaw Railway Company and St. Louis, San Francisco and New Orleans Railroad Company through Ardmore, Okla-
92 homa, to Waurika, Oklahoma, are competing with the lines of the Shawnee, Oklahoma and Missouri Railway Company from Pettigrew, Arkansas through Fayetteville, Arkansas, to Okmulgee, Oklahoma; and the last named lines are competitive with the *the* Gulf, Arkansas and Northwestern Railway Company, the Kansas City, Ft. Scott and Memphis Railway Co., The Kansas City, Ft. Scott, & Memphis Railroad Co., the Ozark & Cherokee Central Railway from Rogers to Grove, from Afton to Baxter, from Baxter to Carthage, from Cherryvale to Monett; that each and all of said roads are connected with a road leading to the northeast to St. Louis, and southeast to Birmingham; and likewise that all the other points, localities and communities where many of said lines touch, drain, or sought or obtained a part of the commerce that the said lines of the Frisco System were so constructed as practically to be in competition. That the trade of said state in export moves either north to Chicago or southward to Galveston or New Orleans. That at each of said points competing lines were then and there operated into the State of Oklahoma, and from said points eastward and north and southward to the various states and foreign countries with which the State of Oklahoma has commerce.

That practically said Frisco system has consolidated into itself, throughout the whole course, in their very nature and geographical condition and situation, four main lines running from Quanah, Vernon, Sherman and Paris, Texas, and concentrating at Monett, Missouri, and from thence going to St. Louis. That said four lines were and ought to be competitors practically for and throughout their whole course and in their geographical condition and
93 situation, and commercially, but peculiarly in the State of Oklahoma throughout its entire history because of the fact that it is not to a large extent a manufacturing, but a consuming state, and, therefore, very largely interested in the importing of merchandise and the exporting of agricultural products. That said four lines are among the largest, most dominating and controlling railroads in the State of Oklahoma, and if they should be separated would afford the people of the whole of said state, except its extreme northwestern portion, peculiar opportunities of competition, not afforded by any other railroads, in that the only roads in said state competent to compete with said four lines of the Frisco if separately operated, would be the Chicago, Rock Island and Pacific Railway Co., and Atchison, Topeka, & Santa Fe; And that neither said Chicago, Rock Island & Pacific Railroad nor said Atchison, Topeka and Santa Fe afforded as did the four lines of the Frisco gateways at both New Orleans and Birmingham in the southeast, and Chicago and St. Louis to the northeast. That said four lines were so built as practically and honestly to demand and compel that they be separately owned and separately operated in competition one with another for the full development of their public service to the State of Oklahoma; and that said Frisco System at Monett, Tulsa and Sapulpa ought to serve each of them independently and without

discrimination, affording them eastern gateways through the said four cities named, Chicago, Birmingham, New Orleans and St. Louis, and that the said Frisco System by acquiring each and all of said four main lines that ought to be in competition has con-
94 solidated the same as though four fingers of a hand the wrist of which is at Monett and the fingers extended to the Southwest to Paris, Sherman, Vernon and Quanah, and by operating the said four lines as one have restrained trade within the said State of Oklahoma as between said four lines, which ought to be in competition, and have killed and annihilated the incentive for the betterment of public service, one as compared to another. That by reason of the fact that said combination, and through this the abolition of necessary competition as among themselves, that said lines have not been brought to a proper condition to serve the public; that said line through Ft. Smith to Paris is a line of reasonable equipment and service only; that said line through Sapulpa to Sherman is of reasonable equipment only and unable at the present time to handle the business offered it for transportation in a proper condition, but by reason of the fact that the trade cannot go over one of the other lines in competition with it, the necessity for betterment and improvement at this time has been done away with.

That because of said abolition of competition, and said consolidation into the Frisco System of said lines through Oklahoma to Quanah and through Enid to Vernonn, although they have been in operation a sufficient length of time to produce a well ballasted, reliable, substantial railroad, they are still nothing but dirt road beds, unballasted, without sufficient equipment to maintain their schedules of business in proper shape for the convenience of the public and the duty belonging upon them as to transportation.

(*d*) That prior to the 16th day of November, 1907 said lines, by the various devices named in the amended bill of the complaint herein, were consolidated and merged together; that whether
95 the same was done by contract, lease, verbal understanding or whatever device or scheme was resorted to, the defendants do not know, and have no information except as contained in the amended bill of complaint, but it alleges that the persons who were influential in the making of said consolidation were B. F. Yoakum, — Carlton and Breckenridge Jones, and their associate stockholders in the Frisco System; and alleges that said persons entered into a scheme or device by which the majority of said stockholders of each of said railroads and of the St. Louis and San Francisco Railroad Company, should be owned and managed by the persons who owned and controlled and managed the stock of the St. Louis and San Francisco Railroad Company; that said last named corporation has been operated for the purpose of consolidating the management and operation of all of said lines; that the exact terms of said arrangement your orator cannot describe but alleges and states on information that the stockholders and bondholders of the various stocks and bonds representing the property and properties owned, leased and operated and controlled by the Frisco System, in what proportion your orator does not know, are held in common for the

benefit of the owners and controllers of all of said railways, and likewise the bonds and stocks of the various property and properties owned, operated, leased, controlled or managed by the various systems; and if so said railroads are and have been operated in common with said St. Louis & San Francisco Railroad Company; and that the purpose and device of this arrangement was to consolidate said system without authority of law, so as to, and for the purpose, and with the effect of creating a combination to restrain trade in the State of Oklahoma and elsewhere. And that said arrange-
96 ment and consolidation as the same was made and has been operated has all the time been an act, agreement, contract, combination in the form of trust or some other form, and a conspiracy in restraint of trade and commerce within this state, which is and was against public policy, and illegal.

(*e*) The attempt to turn over a controlling interest in the stocks and bonds of said railways and systems and thus effect a virtual consolidation of said railways and systems, was contrived and maintained to unlawfully monopolize or attempt to monopolize the trade and commerce of that portion of the United States and of the State of Oklahoma through which said railroads operated, and was contrived and maintained to unlawfully restrain and prevent competition among said railways and their constituent elements in respect both to interstate and intrastate trade in the State of Oklahoma; and was contrived and intended unlawfully to deprive the people of the state of the facilities and advantages in the carrying on of such interstate and intrastate and foreign trade or commerce which would and ought to be enjoyed through the independent competition of said railroads, and said unlawful combination and conspiracy was entered into to effect a virtual consolidation of said railways and said stock of said St. Louis and San Francisco Railroad Company was organized and used and intended to be a holding corporation for the stocks and bonds of said railroad for all of said railroads and their constituent elements, to be used and voted in all respects as though the said Frisco System was one corporation. In this manner the individual stockholders of these independent and competing railway companies were to be eliminated and a single common stockholders and owner and operator, t ehSt. Louis and San Francisco Railroad Company, was to be substituted; the interest of the
97 individual stockholders and property and franchises were to terminate, or at least to be suspended, and the control thereof passed out of their hands directly and was put into the hands of said holden corporation. The individual stockholders of each of said railway companies were thus each of them direct owners of the stocks and bonds in the St. Louis and San Francisco Railroad Company, to have and hold and interest in each of the other of said railroad companies and in the constituent elements thereof, so that any individual owners of any stock or bonds of any part of the Frisco System would upon a certain basis, and measure, which basis and measure your defendants cannot state because they do not know, own an interest in each of the elements constituting said system.

(*f*) That there was no legal authority in any of the states from

which said corporations derived their power to transfer the management of their corporations from their said directors to the St. Louis & San Francisco Railroad Company, and that said transfer was a fraud upon each and every stockholder and the public.

(*g*) That each of said railroads and all railroads, being common carriers, have a right to charge rates for transportation of passengers and freight in the said State of Oklahoma sufficient to raise a reasonable compensation upon the amount of property invested in said railroad, and by said consolidation an over-issue of stocks and bonds upon all of said property has been made, the exact amount of which is known to complainant and not known to defendants; the exact way in which said thing was done is known to said complainant and not known to your defendants, but that through said consoli-
98 dation, and said right to charge reasonable rates, an unjust burden has been made to rest upon the public, either traveling as passengers or transporting freight.

(*h*) In furtherance of the purpose or object of the unlawful combination or conspiracy aforesaid to monopolize and attempt to monopolize the trade and commerce between the several states, and between such states and foreign countries, and in this state, which should be carried on in free competition between the constitutional elements of said Frisco system and to place a restrain- thereon, the individuals named aforesaid and their associate stockholders of the Frisco System, have combined and conspired with one another, whose names are unknown to these defendants, to use and employ in addition to the scheme and device aforesaid, various other schemes, devices and instruments, the precise details of which are at present unknown to your orator but will be read before the court when ascertained, by means of which knowledge, prevention, by order of this court, of the object and purposes of the unlawful combination and conspiracy aforesaid may and will be accomplished; and because of the premises, the State of Oklahoma and its citizens have been irreparably and irremediably damaged and the highways of commerce of said state have been hindered and obstructed, and thereby a nuisance effected to the injury of this state and its inhabitants, and the inhabitants of this state have been injured and their persons and property, to-wit, the right to transport property over railways acting in competition, and the rights and property of citizens of this state have been injured in this: that the facilities that
99 competition brings and fosters have been taken away from the citizens of this state; that the complainant threatens to continue the perpetration of said nuisance, the hindering of said highways of commerce, to the injury and to dwarf the growth of said state, its taxable property, its industries and its trade and commerce, and unless restrained will continue in said unlawful acts.

That by reason of said merger of the management or a part thereof of said highways, and because the said railways are engaged in a public business, an injunction against the further perpetration of unlawful acts and conspiracies will not be thoroughy effective and a receiver will be necessary to take possession of the properties of said railways until they disassociate in all respects their said management

in order that the continued operation of said railways may not in the meantime suffer or cease.

And, therefore, these defendants say that complainant has not done equity and that *his* bill is without equity in the very matter of the ownership and operation of the railway properties in the State of Oklahoma, and that thereby the complainant has not been injured in being denied the opportunity to commit a further and continuous breach of the laws in said state.

5.

As to the fifth paragraph of the bill, the defendants admit that all the said various railways were constructed and completed prior to the 16th day of November, 1907.

6.

As to the sixth paragraph these defendants deny that the legislation of Congress invited the investment of capital into Indian Territory and Oklahoma Territory or either for the purpose of
100 forming any combination of parallel and competing lines of railways in the Indian Territory and Oklahoma Territory, to the effect and for the intent of restraining intr- and interstate traffic and trade therein.

7.

These defendants deny that there is any authority in the constitution or laws of the State of Oklahoma for the further maintenance of said combination in parallel and competing railroads in the State of Oklahoma with the intent and for the effect of restraining intrastate and interstate traffic and trade therein and thereby.

8.

To the eighth paragraph of the bill the defendants admit the passage of an act as set out in said paragraph.

9.

These defendants admit the provisions of the constitution of Oklahoma as stated in the ninth paragraph.

10.

As to the tenth paragraph these defendants deny that the said act is discriminative, oppressive or unlawful, and assert that on the contrary it acts equally upon all corporations and puts them upon an equality, and deny that said act is an attempt to defeat the jurisdiction of the courts of the United States over controversies arising under the constitution of the United States and laws passed in pursuance thereof. And these defendants deny that the passage of said act impairs the obligation of any contract made by the State of Oklahoma, the Territory of Oklahoma, or the Indian Territory or the United States with the complainant or its assigns; and these defendants allege that because of said unlawful combination
101 in restraint of trade as hereinbefore set out, no contract was ever made with said complainant for the operation of said

railroads, and say that even though said complainant had legally and properly complied with all the laws of the United States and said Territory and said State in the operation of its railroad, yet that the only contract made between the said Territories and any foreign corporation operating a railroad therein was that contained in Section 1068 of Wilson's Annotated *States* of the Territory of Oklahoma to the effect that any foreign railroad complying with the laws of the Territory of Oklahoma should, within the Territory of Oklahoma, possess and enjoy all thr rights, powers and privileges and franchises conferred by the laws of the Territory of Oklahoma upon a domestic corporation formed and operated therein, and that these and no further rights were ever given, granted or contracted to any foreign corporation owning a railroad in the State of Oklahoma, and that the effect of said act set out in the Eighth paragraph of the bill does not deny to a foreign corporation owning and operating a railroad in the State of Oklahoma any rights, powers, privileges or franchises conferred by the laws of the Territory of Oklahoma upon a railroad corporation formed thereunder. And these defendants deny that said act is contrary to and violative of any portion of the constitution of the State of Oklahoma, and these defendants deny that said act is any interference with interstate commerce; and these defendants deny that said act purported to give to the Secretary of the State of Oklahoma any arbitrary right to deny the complainant or anyone else the right to do business within said state, and deny that the said act deprives the complainant of any of *his* property, contrary to or violative of any portion of the constitution of the United States.

102 11.

To the Eleventh paragraph these defendants admit that they attempted to declare the authority of the complainant to do business within the State of Oklahoma revoked and forfeited, but deny that the effect of said written instrument set out in the 10th paragraph was void and deny that their action improperly harrassed or annoyed the complainant, and deny that any injury or damage was the result to the complainant of their action.

12.

These defendants deny the allegations contained in the sixth, seventh and eighth subdivisions of the twelfth paragraph.

And further these defendants say that any action taken by the defendants or either of them herein was taken by them and done by them as Secretary of State and as Assistant Secretary of State and Acting Secretary of State, and was done and taken in their official capacity and as the officers of the State of Oklahoma, and that in point of fact the State of Oklahoma is the real defendant in this action, and that, therefore, this court is without jurisdiction of said action, and deny that said act, approved on the 26th of May, 1908, set out in the bill, was unconstitutional for any reason whatsoever or void, and further these defendants say:

That by the said Act of Congress, approved March 30, 1896, appearing in U. S. Statutes at Large, Vol. 29, pages 80 to 82, referred

to by the plaintiff on page 12 of *his* amended petition as the Act under which that portion of the railway lines of St. Louis and San Francisco Railroad Company denoted (*b*) to-wit: from Sapulpa in the State of Oklahoma in a southerly direction to the southern
103 boundary line of said State, at, or near, a point on Red River near the city of Denison, Texas, granting right of way to St. Louis, Oklahoma and Southern Railway Company, it was especially stipulated by Section 4 thereof, as a condition of the grant of right of way therein made as follows: that said railway company "shall not charge the inhabitants of said Territories a greater rate of freight than the rate authorized by the laws of the State of Kansas for services or transportation of the same kind;" that by the word "Territories" therein was meant the Indian Territory and Oklahoma Territory, and that ever since the building of the said St. Louis, Oklahoma and Southern Railway Company, under said Act, and the using by it of said right of way so granted, it on its part has continuously, and does now violate the said condition of said Section 4, in that it has continuously charged the inhabitants of said Territories a greater rate of freight than the rate authorized by the laws of the State of Kansas for services or transportation of the same kind.

The definite amount of excessive overcharges *are* not stated because the complainant knows what the charges are and were at all times authorized by the laws of the State of Kansas, for services or transportation of the same kind as that tendered, offered, and performed by it in said Territories, to-wit: the Indian Territory and Oklahoma Territory, and complainant knows what charges it made to the inhabitants of said Territory at all the times that it has operated said line of railway, in that it has been and is a legal duty of the complainant to charge pursuant to tariffs filed with the Inter-
st-e Commerce Commission, and prepare tariff of charges for its services, or its transportation, and that said tariffs are, and
104 always have been in the control of plaintiff.

That defendants do not know in all cases, or in any cases, the charges authorized by the laws of the State of Kansas for services or transportation of the same kind, as that offered, tendered, or performed for the inhabitants of the said Territories by the St. Louis, Oklahoma and Southern Railway Company, and St. Louis & San Francisco Railroad Company, either or both, and that when the property of the St. Louis, Oklahoma and Southern Railway Company became the property of the complainant, St. Louis & San Francisco Railroad Company, it was upon the express condition that all the obligations resting upon the St. Louis, Oklahoma and Southern Railway Company, the grantee in said Act, should be fully performed by the St. Louis & San Francisco Railroad Company; that by reason of its continuous failure to perform its obligations, the complainant has forfeited all rights, if any, it obtained under said Act of Congress, and has abandoned its corporate rights in this State, and did so previous to the 16th day of November, 1907; and for the purpose of proving fully the matters and things herein stated, and beca-se the said matters are in the possession and knowledge of the St. Louis & San Francisco Railroad Company, the defendants

pray that it be compelled by order of court to set out fully all its tariffs which provide for similar services in the State of Oklahoma and in the State of Kansas, and particularly all those tariffs which at any time charge a different or greater rate in what is now the State of Oklahoma for services or transportation of the same
105 kind, than for like services in the State of Kansas.

That when St. Louis & San Francisco Railroad Company merged in its railway line the lines of St. Louis, Oklahoma and Southern Railway Company, it was obligated under all the obligations of the said St. Louis, Oklahoma and Southern Railway Company throughout the whole other lines belonging to said Frisco System.

That by said Act of Congress approved March 18, 1896, appearing in the 29th U. S. Stat. at Large, at pages 69 and 70, referred to by the complainant on page 15 in the amended bill, as an act under which that portion of the railway lines of St. Louis & San Francisco Railway Company denoted "(c)" to-wit: from Sapulpa in the State of Oklahoma to the City of Oklahoma City in said State, granted right of way to St. Louis and Oklahoma City Railroad Company, it was especially stipulated by Section 4 thereof as a condition of the right of way therein made as follows: that said railway company "shall not charge the inhabitants of said territories a greater rate of freight than the rate authorized by the laws of the State of Kansas for services or transportation of the same kind"; that by the word "Territories" therein was meant the Indian Territory and Oklahoma Territory, and that ever since the building of the said St. Louis and Oklahoma City Railroad Company, under said Act, and the using by it of said right of way so granted it on its part, has continuously and does now violate the said condition of said Section 4, in that it has continuously charged the inhabitants of said Territories a greater rate of freight than the rate authorized by the laws of the State of Kansas for services or transportation of the same kind.

That complainant knows what charges are and were at
106 all times authorized by the laws of the State of Kansas, for services or transportation of the same kind as that tendered, offered, and performed by it in said Territories, to-wit: The Indian Territory and Oklahoma Territory, and complainant knows what charges it made to the inhabitants of said Territory at all the times that it has operated said line of railway, in that it has been and is a legal duty of the complainant to charge pursuant to tariffs filed with the Interstate Commerce Commission, and prepare tariff of charges for its services, or its transportation, and that said tariffs are and always have been in the control of the complainant.

The definite amount of excessive overcharges *are* not stated because the defendants do not know in all cases, or in any cases, the charges authorized by the laws of the State of Kansas for services or transportation of the same kind, as that offered, tendered, or performed for the inhabitants of the said territories by the St. Louis and Oklahoma City Railroad Company and St. Louis & San Francisco Railroad Company, either or both, and that when the

property of the St. Louis and Oklahoma City Railroad Company became the property of the plaintiff, St. Louis & San Francisco Railroad Company, it was upon the express condition that all the obligations resting upon the St. Louis and Oklahoma City Railroad Company, the grantee in said Act, should be fully performed by the St. Louis & San Francisco Railroad Company; that by reason of its continuous failure to perform its obligations, the plaintiff in this suit has forfeited all rights, if any, it obtained under said Act of Congress, and has abandoned its corporate rights in this State, and did so previous to the 16th day of November, 1907; and for

107 the purpose of proving fully the matters and things herein stated, and because the said matters are in the possession and knowledge of the St. Louis & San Francisco Railroad Company, the defendants pray that it may be compelled by order of court to set out fully all its tariffs which provide for similar services in the State of Oklahoma and in the State of Kansas, and particularly, all those tariffs which at any time charge a different or greater rate in what is now the State of Oklahoma, for services or transportation of the same kind, than for like services in the State of Kansas.

That when said St. Louis & San Francisco Railroad Company merged in its railway line the lines of the St. Louis and Oklahoma City Railroad Company, it was obligated under all the obligations of the said St. Louis and Oklahoma City Railroad Company throughout the whole of the other lines belonging to said Frisco system.

That by said Act of Congress, approved August 2, 1882, appearing in the 22nd U. S. Stat. at Large, pages 181 to 183, referred to by the complainant on page 28 of its amended petition as an Act under which that portion of the railway lines of the St. Louis & San Francisco Railway Company, denoted "(*h*)" to-wit: from Monette through Fort Smith, Arkansas, to Paris, Texas, was granted right of way, that by Section seven of said Act, as set out on pages 28 and 29 of the plaintiff's amended petition, it was provided:

"That no greater rates of fare or freight shall be charged in the Choctaw and Chickasaw Nations by said railway company than the lowest rate authorized by law in the States of Arkansas and Texas, or either of them, for services or business of the same kind;"

108 that ever since the building of said St. Louis & San Francisco Railroad Company from Monette through Fort Smith, Arkansas, to Paris, Texas, as aforesaid, under said Act, and the using by it of said right of way so granted, it on its part has continuously and does now violate the said condition of said Section seven in that it has continuously charged in the Choctaw and Chickasaw Nations more and greater rates of fare or freight than the lowest rate authorized by law in the States of Arkansas and Texas, or either of the-, for services or business of the same kind.

The definite amount of excessive overcharges are not stated because the complainant knows what charges and rates of fare or

freight are and were at all times the lowest rate authorized by law in the States of Arkansas and Texas, or either of them, for services or business of the same kind as that performed in the Choctaw and Chickasaw Nations, and knows what charges and rates of fare and freight it charged in the Choctaw and Chickasaw Nations at all times that it has operated said line of railway, in that it has been and is a legal duty of the complainant to charge in accordance with tariffs on file with the Interstate Commerce Commission, and prepare tariffs for charges for its services or its transportation, and said tariffs are and always have been in the control of the defendant.

That defendants do not know in all cases, or in any cases, the lowes- charges and the rates authorized by the laws of the State of Arkansas or Texas, or either of them, for services or business of the same kind as that performed by defendant in the Choctaw and Chickasaw Nations, or what were the charges or rates charged by it for services or business of the same kind performed in the Choctaw and Chickasaw Nations, and that when the property of said St. Louis & San Francisco Railway was acquired by com-
109 plainant, St. Louis & San Francisco Railroad Company, it was upon the express condition that all the obligations resting upon the St. Louis & San Francisco Railway Company, the grantee in said Act, should be fully performed by the St. Louis & San Francisco Railroad Company; that by reason of its continuous failure to perform its obligations the complainant has forfeited all rights, if any, it obtained under said Act of Congress, and did so both previous to the 16th of November, 1907, and after said date, and before the time the said Secretary of State forfeited its charter as aforesaid; and for the purpose of proving fully the matters and things herein stated, and because the said matters are in the possession and knowledge of the said St. Louis & San Francisco Railroad Company, the defendants pray that it be compelled by order of court to set out fully all its tariffs which provide for services or business of the same kind in the States of Arkansas and Texas and the Choctaw and Chickasaw Nations, and particularly, all those tariffs which at any time charge, or charged a different or greater rate in what is the Choctaw and Chickasaw Nations for services or business of the same kind, than in the State- of Arkansas and Texas.

That when said St. Louis & San Francisco Railway Company merged its railway line into the lines of St. Louis & San Francisco Railroad Company herein known as the Frisco System, the said Frisco System was obligated under all the obligations of said St. Louis & San Francisco Railway Company throughout the whole of the other lines belonging to said Frisco System.

That by said act of Congress approved April 6, 1896, appearing in 129 U. S. Stat. at Large, at pages 86 to 87, referred to by
110 the plaintiff on page 25 of his amended petition, as an act under which that portion of the railway lines of the St. Louis & San Francisco Railroad Company, denoted "12, lying between the cities of Miami and Afton in the State of Oklahoma, was granted right-of-way, under the name of the Arkansas Northwestern

Railway Company, it was stipulated in Section 4 thereof that said company "shall not charge the inhabitants of said territory a greater rate of freight than the rate authorized by the laws of the State of Arkansas for services or transportation of the same kind." That by the word "territory" was meant the Indian Territory. That ever since the building of said railway by said Arkansas and Northwestern Railway Company and its successors under said act, and the using by it of said right of way so granted it, it has continuously and does now violate the said conditions of said section 4, in that it h-s continuously charged the inhabitants of said territory a greater rate of freight than the rate authorized by the laws of the State of Arkansas for services or transportation of the same kind. The definite amount of excessive overcharges are not stated because complainant knows what the charges are and were at all the times authorized by the laws of the State of Arkansas for services of transportation of the same kind as that tendered, offered and performed by it in said territory, and complainant knows what charges it made to the inhabitants of said territory at all the times it has operated said lines of railway in that it has been the legal duty of the defendant to charge pursuant to tariffs filed with the Interstate Commerce Commission, and prepare tariffs for charges of transportation, and that said tariffs are now and have always been in the control of the complainant. That defendants do not know in all cases,
111 or in any cases the charges authorized by the laws of the State of Arkansas for services or transportation of the same kind as that offered, tendered or performed for the inhabitants of said territory by the Arkansas Northwestern Railway Company and its successors, either or both; and that when the property of said Arkansas Northwestern Railway Company became the property of defendant, St. Louis & San Francisco Railroad Company it was upon the express condition that all the obligations resting upon the Arkansas Northwestern Railway Company, the grantee in said act, should be fully performed by St. Louis & San Francisco Railroad Company; that by reason of its continuous failure to perform its obligations the plaintiff in this suit has forfeited all rights, if any it obtained under said act of congress, and has abandoned its corporate rights in this state and did so previous to the 16th of November, 1907, and did so after that date and before the time the said Secretary of State forfeited its charter as aforesaid; and for the purpose of proving fully the matters and things herein stated, and because the said matters are in the possession and knowledge of the said St. Louis & San Francisco Railroad Company, the defendants pray that it be compelled by order of court to set out all of its tariffs which provide for similar services in the State- of Oklahoma and Arkansas and particularly those tariss which charged different or greater rates in what is now the State of Oklahoma, for services or transportation of the same kind, than for like services in the State of Arkansas. That when said Arkansas Northwestern Railway and its successor were merged into those of the St. Louis and San
112 Francisco Railroad Company, known as the Frisco System, the latter was obligated and burdened with all the obliga-

tions of said Arkansas and Northwestern Railroad, and this throughout the whole of the other lines belonging to said Frisco system.

And because of the foregoing facts these defendants say that the complainant has not done equity in the very matter of the ownership and operation of said Railway lines in the Indian Territory and Oklahoma Territory, and State of Oklahoma, and that the bill does not show equity in the very matter of the operation of said lines because of the facts aforesaid, and that complainant has suffered no injury in the forfeiture of his rights to do business in the State of Oklahoma, and these defendants expressly say that the signing of said instrument set out in the tenth paragraph of the bill was made and done without any knowledge or information on their part, that an action has been instituted and without any intent to prevent or forestall the institution of an action, but solely and because under the valid laws of the State of Oklahoma it was their duty to sign, to do and perform, what was signed, done and performed by them.

Wherefore, these defendants having fully answered, confessed, traversed, and avoided or denied all the matters in said bill of complain material to be answered, according to their best knowledge and belief, humbly pray your honorable court to enter its judgment that these defendants respectively be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained, and that the restraining order issued be dissolved.

CHAS. WEST,
Attorney General.

Service of copy and consent to filing out of time accepted.
9/20/09.

C. B. AMES.

(Endorsed:) #278. In the Circuit Court of the United States for the Western District of Oklahoma. St. Louis & San Francisco Railroad Co., a corporation, complainant, vs. Bill Cross, Secretary of State, et al., defendants. Joint answer of defendants. Filed this 21st day of September, 1909. Harry L. Finley, Clerk.

113 In the Circuit Court of the United States for the Western District of the State of Oklahoma.

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY, a Corporation, Complainant,

vs.

BILL CROSS, Secretary of State of Oklahoma, and LEO MEYER, Deputy Secretary of State of Oklahoma and Acting Secretary of State of Oklahoma, Defendants.

Exceptions to Answer of Defendants.

Exceptions taken by St. Louis and San Francisco Railroad Company, the Complainant in said cause, to the joint answer of the defendants heretofore filed therein:

First Exception.—For that the matters and things set out in the paragraph of said answer numbered 4, are conclusions of law, impertinent, and ought to be expunged.

Second Exception.—For that all those parts of the paragraph of said answer numbered 12, commencing with the words "That by the said Act of Congress, approved March 30, 1896" on page 17 of said answer and extending thence to the prayer of said answer, are impertinent and the statement of legal conclusions and ought to be expunged.

In all of which particulars the said complainant humbly insists that the defendants' said answer is irrelevant, impertinent and scandalous.

Wherefore, the said complainant excepts thereto and humbly prays that the irrelevant, impertinent and scandalous matter excepted to as aforesaid be expunged with costs.

W. F. EVANS,
R. A. KLEINSCHMIDT,
FLYNN, AMES & CHAMBERS,
Counsel for Complainant.

(Endorsed:) #278. St. Louis & San Francisco R. R. Co. vs. Bill Cross, et al. Exceptions to answer of defendants. Filed Nov. 1, 1909. Harry L. Finley, Clerk.

114 In the Circuit Court of the United States for the Western District of the State of Oklahoma.

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY, a Corporation, Plaintiff,
vs.
BILL CROSS, Secretary of State, et al., Defendants.

Stipulation.

It is hereby stipulated in said cause that whereas the above named defendant, Bill Cross, has departed this life and the above named defendant, Leo Meyer succeeded to the office of Secretary of State of the State of Oklahoma, and his term of office has expired, and

Whereas Ben F. Harrison has been elected to succeed him and is now the duly qualified and acting Secretary of State of the State of Oklahoma, that the said Ben F. Harrison may be substituted as the defendant in the above entitled cause and that said cause shall hereafter proceed under the name of the St. Louis and San Francisco Railroad Company v. Ben F. Harrison, Secretary of State of the State of Oklahoma and that all pleadings, orders and injunctions heretofore issued in said cause may stand as against the said Ben F. Harrison and that an order may be made accordingly.

FLYNN, AMES & CHAMBERS,
Attorneys for Plaintiff.
CHAS. WEST, *Attorney General,*
Attorney for Defendants.

(Endorsed:) No. 278, Circuit Court of the United States for Western Dis. of Okla. St. Louis and San Francisco R. R. Co., plaintiff v. Bill Cross, Secretary of State, etc. Stipulation. Filed Mch. 20, 1911. Harry L. Finley, Clerk.

115 In the Circuit Court of the United States for the Western District of the State of Oklahoma.

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY, a Corporation, Plaintiff,
vs.
BILL CROSS, Secretary of State, et al., Defendants.

Order.

This cause coming on to be heard on this 20th day of March, 1911, upon stipulation of the parties that Ben F. Harrison be substituted for the above named defendant, and the court being fully advised in the premises, it is ordered that said Ben F. Harrison be substituted for the above named defendants and that all pleadings, orders and proceedings heretofore had in said cause, including the tem-

porary injunction issued, may stand in full force and effect as against the said Ben F. Harrison and that said cause shall proceed in the future under the style of St. Louis and San Francisco Railroad Company v. Ben F. Harrison, Secretary of State of the State of Oklahoma.

It is further ordered by consent of the parties that no further pleadings need be filed in said cause but that all papers, pleadings and process now on file in said cause may stand as against the said Ben F. Harrison, as Secretary of State, as fully and to the same extent as if he were named therein as the defendant.

Ordered, adjudged and decreed in open court on the date above named.

JOHN H. COTTRELL, *Judge.*

Endorsed: #278, Order. St. Louis and San Francisco Railroad Company, vs. Bill Cross, Secretary of State et al., Defendants. Filed M'ch 20, 1911, Harry L. Finley, Clerk.

116 In the Circuit Court of the United States for the Western District of Oklahoma.

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY, a Corporation, Complainant,

vs.

BEN F. HARRISON, Secretary of State of the State of Oklahoma, Defendant.

Decree.

This cause coming on to be heard on this the 20th day of March, 1911, being a regular day of the Oklahoma City term of said court, upon the exceptions of the complainant to the answer of the defendant heretofore filed therein, and the complainant in said cause appearing by Mess. R. A. Kleinschmidt and Flynn, Ames & Chambers, its attorneys, and the defendant in said cause appearing by Honorable Charles West, Attorney General of the State of Oklahoma, his attorney, and the same being submitted to the court upon said exceptions and the arguments of counsel, and the court being fully advised in the premises, it is by the court ordered, adjudged and decreed that the exceptions of the complainant be and they are hereby sustained, and that the portions of said answer excepted to by the complainant, to-wit, the paragraph of said answer numbered 4 and all those p-rts of the paragraph of said answer numbered 12 commencing with the words "that by said act of Congress, approved March 30, 1896" on page 17 said answer and extending thence to the prayer of said answer be and the same are hereby expunged, to which order of the court the complainant at the time excepted.

Thereafter and at the same time by consent of the parties, said cause is set down for hearing by the complainant on the bill and

answer as said answer stands after the order of the court
117 sustaining the exceptions as aforesaid, and the parties being present and appearing as hereinbefore recited and the court being fully advised in the premises finds that the temporary injunction heretofore granted in said cause should be and the same hereby is made permanent and the said defendant, Ben F. Harrison as Secretary of State of the State of Oklahoma, and all other persons acting by, through or under his authority be and they are hereby forever enjoined and restrained from forfeiting or revoking, declaring forfeited or revoked, or attempting to forfeit or revoke the authority or charter of the complainant to carry on its business as a common carrier in the State of Oklahoma, or from taking any proceedings against the complainant under the terms and provisions of an act of the legislature of Oklahoma, approved May 26, 1908, for that said act of the legislature is unconstitutional, unenforcible and not binding as to the said complainant, and that said defendant be forever restrained and enjoined from enforcing or attempting to enforce the provisions of said act by attempting to deny to the complainant the right to carry on its business as a common carrier in the state of Oklahoma, to which the said defendant at the time excepted, and the said defendant at the time and in open court gave notice of appeal to the Supreme Court of the United States.

It is further ordered, adjudged and decreed that the costs of said cause be taxed against the defendant.

JOHN H. COTTERAL, *Judge*.

O. K.
F. A. & C.
O. K.
WEST.

Endorsed: No. 278. In the Circuit Court of the United States for the Western District of Oklahoma. St. Louis & San Francisco R. R. Co. Complainant vs. Ben. F. Harrison, Secretary of State of Oklahoma, Defendant. Decree. Filed March 20, 1911. Harry L. Finley, Clerk, by M. V. Haws, Deputy.

118 In the Circuit Court of the United States for the Western District of Oklahoma.

No. 278.

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY, a Corporation, Complainant,

vs.

BEN F. HARRISON, Secretary of State of the State of Oklahoma, Defendant.

Assignment of Errors.

The defendant, Ben F. Harrison, Secretary of State of the State of Oklahoma, prays an appeal from the decree of this court, made

and entered in said cause on the 20th day of March, 1911, to the Supreme Court of the United States, and assigns:

First. That the court erred in overruling the demurrer of the defendant to the amended bill of complaint.

Second. That the court erred in sustaining the exceptions of the complainant to the answer of the defendant and in expunging from said answer certain portions therein contained.

Third. That the court erred in making permanent the temporary order of injunction granted in said cause by which order the defendant, Ben F. Harrison, as Secretary of State of the State of Oklahoma, and all persons acting by, through or under his authority, were forever enjoined and restrained from forrfeiting or revoking, declaring forfeited or revoked, or attempting to forfeit or revoke, the authority or charter of the complainant to carry on its business as a common carrier in the State of Oklahoma, or from taking any proceedings against the complainant under the terms and provisions of an Act of the Legislature of Oklahoma, approved May 26, 1908, and by which said defendant was forever restrained and enjoined from enforcing or attempting to enforce the provisions of said act by attempting to deny to the complainant the right to carry
119 on its business as a common carrier in the State of Oklahoma.

In order that the foregoing assignments of error may appear of record, the said defendant presents the same to the court, and prays that such disposition be made as in accordance with law and the statutes of the United States in such cases made and provided.

All of which is respectfully submitted.

BEN F. HARRISON,
Secretary of State of the State of Oklahoma, Defendant.
By CHARLES WEST,
Attorney General.

Endorsed: No. 278. In the Circuit Court of The U. S. Western District of Oklahoma. St. Louis and San Francisco Railroad Company, Complainant, vs. Ben. F. Harrison, Secretary of State of the State of Oklahoma, Defendant. Assignment of Errors. Filed Ap'l 27, 1911. Harry L. Finley, Clerk.

120 In the Circuit Court of the United States for the Western District of Oklahoma.

No. —.

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY, a Corporation, Complainant,
vs.
BEN F. HARRISON, Secretary of State of the State of Oklahoma, Defendant.

Application for Appeal.

The above named defendant, Ben F. Harrison, Secretary of State of the State of Oklahoma, conceiving himself aggrieved by the de-

cree made and entered by the above court in said cause on the 20 day of March, 1911, by which decree the court sustained the exceptions of the complainant to the answer of the defendant and expunged from said answer certain portions of the answer, and by which order the temporary injunction heretofore granted in said cause was made permanent and the said defendant, Ben F. Harrison, as Secretary of State of Oklahoma, and all persons acting by, through or under his authority are forever enjoined and restrained from forfeiting or revoking, declaring forfeited or revoked, or attempting to forfeit or revoke, the authority or charter of the complainant to carry on its business as a common carrier in the State of Oklahoma, or from taking any proceedings against the complainant under the terms and provisions of an Act of the Legislature of Oklahoma, approved May 26, 1908, and by which said defendant was forever restrained and enjoined from enforcing or attempting to enforce the provisions of said act by attempting to deny to the complainant the right to carry on its business as a common carrier in the State of Oklahoma, do hereby appeal to the Supreme Court of the United States, for the reasons set out in the assignment of errors, which is filed herewith; and he prays this petition for said appeal may be allowed and that a transcript of the record, proceedings and papers upon which decree is made duly authenticated, may be sent to the Supreme Court of the United States.

121

Dated this 28th day of March, 1911.

BEN F. HARRISON,
Secretary of State of the State of Oklahoma,
By CHARLES WEST,
Attorney General, Solicitor for Defendant.

Notice and citation on appeal, to show cause why application should not be granted is hereby waived this 19 day of April, 1911.

C. B. AMES,
Solicitor for Complainant.

Appeal allowed and cost bond fixed at Five Hundred (500) Dollars; but it is ordered that appeal and bond shall not act as supersedeas upon the decree herein in any event.

Dated this 27th day of April, 1911.

JOHN H. COTTERAL, *Judge.*

Endorsed: No. 278. In the Circuit Court of the U. S. Western District of Oklahoma. St. Louis and San Francisco Railroad Company, Complainant, vs. Ben F. Harrison, Secretary of State of the State of Oklahoma, Defendant. Application for Appeal and order allowing same. Filed April 27, 1911. Harry L. Finley, Clerk. By M. V. Haws, Deputy.

122 In the Circuit Court of the United States for the Western District of Oklahoma.

No. 278.

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY, a Corporation, Complainant,

vs.

BEN F. HARRISON, Secretary of State of the State of Oklahoma, Defendant.

123 Bond.

Know all men by these presents:

That Ben F. Harrison, Secretary of State of the State of Oklahoma, as principal, and Leo Meyer as surety, are held and firmly bound unto the St. Louis & San Francisco Railroad Company, a corporation, in the sum of Five Hundred Dollars, to be paid to it, and for the payment of which well and truly to be made they and each of them are bound by these presents.

Sealed with our seals and dated this 27 day of April, 1911.

Whereas, the above named Ben F. Harrison, Secretary of State of the State of Oklahoma, appellant, seeking to prosecute this appeal to the Supreme Court of the United States, to reverse a final decree rendered and entered in the Circuit Court of the United States for the Western District of Oklahoma, wherein appellant was defendant, and the appellee herein was complainant, on the 20th day of March, 1911.

Now, therefore, The conditions of this obligation are such that if the above named appellant shall prosecute his appeal to effect and answer all costs that may be adjudged if he shall fail to make good his appeal, then this obligation to be void; otherwise to remain in full force and effect.

BENJAMIN F. HARRISON,
Sec'y of State.
LEO MEYER, *Surety.*

O. K.
C. B. AMES.

This bond approved this 27th day of April, 1911.
JOHN H. COTTERAL, *Judge.*

124 Endorsed: No. 278. In the Circuit Court of U. S. Western District of Oklahoma. St. Louis and San Francisco Railroad Company, Complainant, vs. Ben F. Harrison, Secretary of State of the State of Oklahoma, Defendant. Bond. Filed April 27, 1911. Harry L. Finley, Clerk. By M. V. Haws, Deputy.

125 In the Circuit Court of the United States for the Western District of Oklahoma.

No. —.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, a Corporation, Complainant,

vs.

BEN F. HARRISON, Secretary of State of the State of Oklahoma, Defendant.

Waiver of Citation on Appeal.

The complainant, St. Louis & San Francisco Railroad Company hereby waives the issuance of citation on appeal from the order made herein on the 20 day of March, 1911, to the Supreme Court of the United States, and enters an appearance in said appeal to the Supreme Court of the United States.

Dated this 29 day of April, 1911.

C. B. AMES,
Solicitor for Complainant.

Endorsed: No. 278. In the Circuit Court of the U. S. Western District of Oklahoma. St. Louis and San Francisco Railroad Company, Complainant, vs. Ben F. Harrison, Secretary of State of the State of Oklahoma, Defendant. Waiver of citation on appeal. Filed May 2, 1911. Harry L. Finley, Clerk by M. V. Haws, Deputy.

126 In the Circuit Court of the United States for the Western District of Oklahoma.

No. 278.

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY, a Corporation, Complainant,

vs.

BEN F. HARRISON, Secretary of State of the State of Oklahoma, Defendant.

Stipulation.

It is hereby stipulated by and between the complainant and the defendant, that there may be omitted from the transcript of the record on appeal, the following:

Original Bill of Complaint, Filed August 28, 1908;
Praecipe for Chancery Subpœna;
Restraining Order;
Bond of Complainant on Restraining Order;
Chancery Subpœna Return of Marshal Thereon;
Order of Sept. 5, 1908, Continuing Cause;
Order of Sept. 17, 1908, Granting Leave to Complainant to File Amended Bill;

Stipulation of Oct. 4, 1908, Continuing Cause;
Order of Jan. 2, 1909, Continuing Cause to Jan. 26, 1909;
Order of Jan. 26, 1909, Continuing Cause;
Order of June 4, 1909, Overruling the Demurrer of the Defendant to the Bill of Complaint, Granting Defendant time to answer and to file cross-bill, and granting an injunction;

127 Stipulation of Oct. 9, 1909, granting complainant extension of time in which to plead to defendant's answer;
Stipulation of Dec. 13, 1909, waiving rule requiring complainant to set the cause down upon its exceptions to defendant's answer,

and all other papers in said cause, except the following, which shall constitute the record on appeal:
Amended Bill of Complaint, filed Dec. 22, 1908;
Demurrer of defendant to amended bill of complaint, filed Jan. 14, 1909;
Opinion of the court, filed June 4, 1909;
Joint Answer of defendants, filed Sept. 21, 1909;
Exceptions of complainant to answer of defendants, filed Nov. 1, 1909;
Stipulation for substitution of defendant, filed March 20, 1911;
Order substituting Ben F. Harrison as defendant, filed March 20, 1911;
Decree, filed March 20, 1911,

and such other pleading, orders, etc., as have been or may be filed in said cause after the 20th day of March, 1911.

C. B. AMES,
Solicitor for Complainant.
CHARLES WEST,
Attorney General, Solicitor for Defendant.

Endorsed: No. 278. In the Circuit Court of the U. S. Western District of Oklahoma. St. Louis & San Francisco Railroad Company, Complainant, vs. Ben F. Harrison, Secretary of State, Defendant. Stipulation. Filed May 2, 1911. Harry L. Finley, Clerk. By M. V. Haws, Deputy.

128 In the Circuit Court of the United States for the Western District of Oklahoma.

No. 278.

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY, a Corporation, Complainant,
vs.
BEN F. HARRISON, Secretary of State of the State of Oklahoma, Defendant.

Præcipe for Transcript of the Record.

The Clerk of said Court will prepare a transcript of the record in this case on appeal from this court to the Supreme Court of the

United States, in accordance with the Stipulation of the parties to said cause as to the record on appeal in said cause.

Dated the 29 day of April, A. D. 1911.

BEN F. HARRISON,
Secretary of State of the State of Oklahoma,
By CHARLES WEST,
Attorney General, Solicitor for Defendant.

Endorsed: No. 278. In the Circuit Court of the United States, Western District of Oklahoma. St. Louis and San Francisco Railroad Company, Complainant, vs. Ben F. Harrison, Secretary of State of the State of Oklahoma, Defendant. Præcipe for transcript of the record. Filed May 2nd, 1911. Harry L. Finley, Clerk. By M. V. Haws, Deputy. Chas. West, Attorney General.

129 UNITED STATES OF AMERICA,
Western District of Oklahoma, ss:

I, Harry L. Finley, Clerk of the Circuit Court of the United States of America, for the Western District of Oklahoma, do hereby certify the foregoing to be a full, true and complete transcript of the pleadings, record and proceedings in said court in case No. 278, In Equity, wherein the St. Louis and San Francisco Railroad Company, a corporation, is Complainant, and Ben F. Harrison, Secretary of State of the State of Oklahoma, is defendant, as full true and complete as the said transcript purports to contain, and as designated in the stipulation and præcipe for transcript of the record above set forth.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Guthrie, in said Western District of Oklahoma, this 20th day of May, A. D. 1911.

[The Seal of the Circuit Court of the United States, Western District of Oklahoma.]

HARRY L. FINLEY,
Clerk of the Circuit Court of the United States for the Western District of Oklahoma.

Endorsed on cover: File No. 22,699. W. Oklahoma C. C. U. S. Term No. 623. Ben F. Harrison, Secretary of State of the State of Oklahoma, appellant, vs. St. Louis & San Francisco Railroad Company. Filed May 25th, 1911. File No. 22,699.

Office Supreme Court, U. S.
FILED.
OCT 9 1911
JAMES D. McKENNEY,
Clerk.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1911.

No. 665, 34

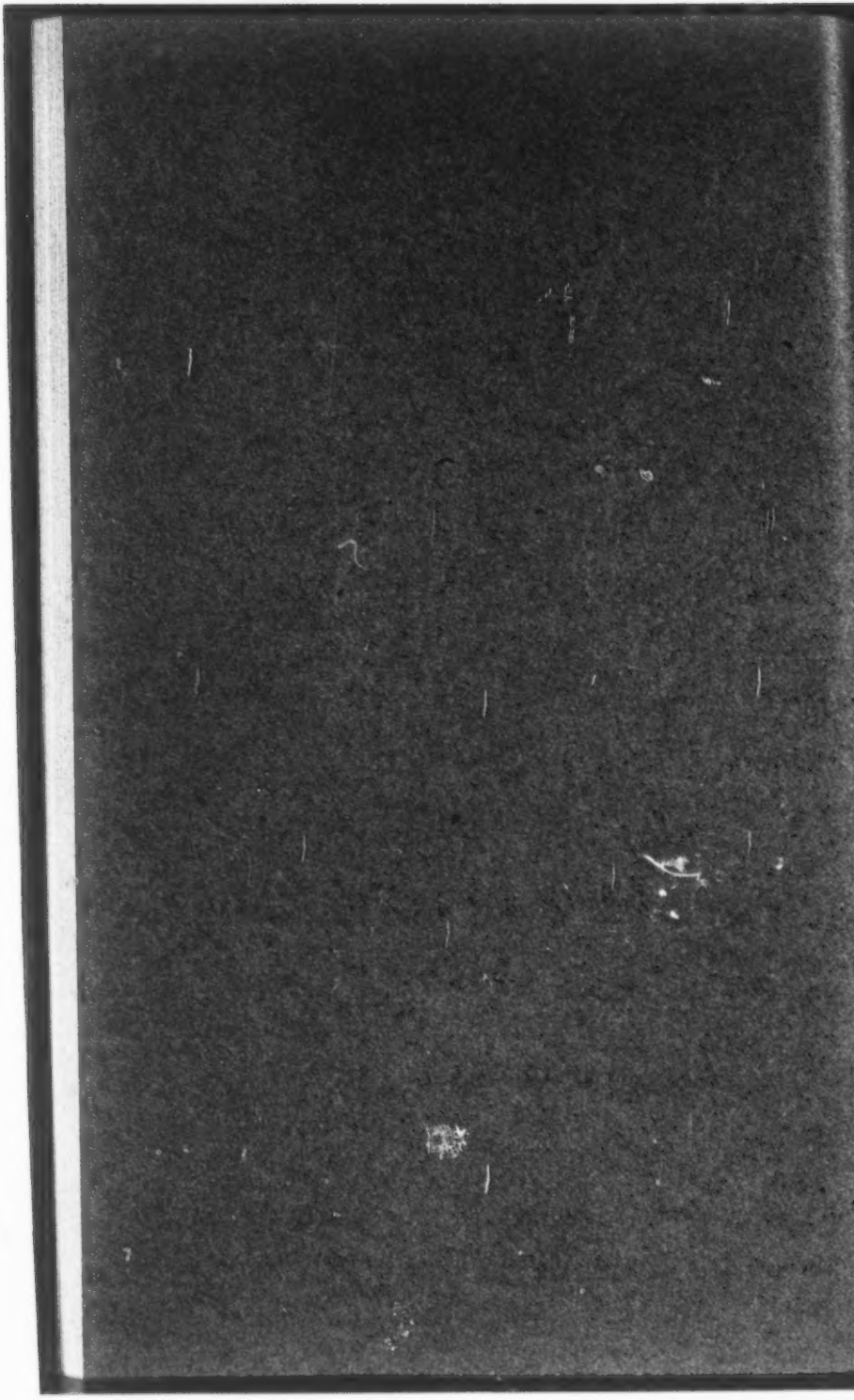
BEN E. HARRISON, SECRETARY OF STATE OF THE STATE OF OKLAHOMA, APPELLANT,

vs.

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY, APPELLEE.

MOTION TO ADVANCE NO. 623.

CHAS. WEST,
Attorney General of Oklahoma, Attorney for Appellant.



IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1911.

No. 623

BEN F. HARRISON, SECRETARY OF STATE OF THE STATE OF OKLAHOMA, APPELLANT,

vs.

ST. LOUIS AND SAN FRANCISCO RAILROAD .... COMPANY, APPELLEE.

MOTION TO ADVANCE NO. 623.

Comes now the appellant herein and moves the court to advance this question for hearing and

set the same down at a date as early as practicable for the following reason:

The case involves the question of whether the legislature of the State of Oklahoma may domicile within the State all corporations doing domestic business in that state and may require of all corporations domiciled in the state that they shall not claim a domicile elsewhere. The law makes the same requirement of foreign and domestic corporations and seeks to put them upon a parity. Other subsidiary questions also as to how the law applies to the appellee arise in the case. The lower court held the law unconstitutional. The matter involved is a matter of great public interest because the appellee is now operating more railroad mileage in the State of Oklahoma than any other railroad therein, and because the decision of the case will probably apply to all corporations that are doing both a domestic and an interstate business in said state.

Charles West

Attorney General of Oklahoma, Attorney for Appellant.

34

NO. [redacted]

Supreme Court, U.S.
FILED.
NOV 29 1911
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States

October Term, 1911

BEN F. HARRISON, SECRETARY OF STATE OF THE STATE OF OKLAHOMA,

Appellant,

vs.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY.

Appeal from the Circuit Court of the United States for the Western District of Oklahoma

BRIEF OF APPELLANT

CHAS. WEST,
Attorney General of the State of Oklahoma,
Attorney for Appellant.

I.

ABSTRACT OF THE CASE.

A. The Questions in the Case.

There are questions as to the legality and effect of the act of the Legislature of Oklahoma, approved May 26th, 1908. We set it out in full:

> "An act fixing the domicile of persons, firms, and corporations transacting business within the State of Oklahoma; providing for forfeiture and revocation of license to transact business in the state upon the filing in any court of record, claim or declaration of domicile in another state or foreign country; the duty of judges relative thereto; and providing penalty for transacting business after revocation of license.
>
> *Be it Enacted by the People of the State of Oklahoma:*
>
> "Section 1. That the domicile of every person, firm or corporation conducting a business in person, by agent, through an office, or otherwise transacting business within the State of Oklahoma, and which has complied with or may comply with the Constitution and laws of the State of Oklahoma, shall be for all purposes deemed and held to be the State of Oklahoma.

"Section 2. That the license or charter to do business within the State of Oklahoma of every person, firm or corporation conducting a business in person, by agent, through an office or otherwise transacting business within said State of Oklahoma, who shall claim or declare in writing before any court of law or equity within said State of Oklahoma, domicile within another state or foreign country, shall, upon such declaration, be immediately revoked.

"Section 3. That it shall be the duty of the Judge of any court in which any declaration or claim of domicile within another State or foreign country is filed to report to the Secretary of State and to furnish said Secretary of State with an authenticated copy of any claim or declaration in writing made or filed, declaring domicile within another state or foreign country.

"Section 4. That the Secretary of State immediately upon the receipt of the copy of the claim or declaration of any person, firm or corporation as aforesaid, shall declare the license or charter of any person, firm or corporation so filing said claim or declaration, forfeited and revoked.

"Section 5. That any person, firm or corporation conducting a business in person, by agent, through an office, or otherwise transacting business within the State of Oklahoma, whose license to do business within said State of Oklahoma shall have been revoked as aforesaid, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than one thousand dollars ($1,000) nor more than five thousand dollars (5,000) for each day or part

thereof they shall so conduct a business after the revocation of their license to do business within this State as aforesaid.

"Sec. 6. Nothing in this act shall be construed to allow any corporation organized under the law of any other State, Territory or foreign country to exercise the right of eminent domain in the State of Oklahoma.

"Sec. 7. An emergency is hereby declared to exist, whereby the immediate passage of this act is declared necessary for the preservation of the public peace and safety, and this act shall be in full force and effect upon its passage and approval.

Approved May 26, 1908."

Issues on Demurrer.

Questions as to this act arose in this case as follows:

FIRST:

Is the purpose of the act merely to subject to the visitorial powers of the state all corporations, both domestic and foreign, without discrimination, which do intra state business in Oklahoma, by requiring a domicile in that state, and placing the same reasonable punishment, that of expatriation, without discrimination, on all who repudiate the just regulation of the state in this matter?

This is the position of plaintiff in error.

Or, the position of defendant in error:—

SECOND:

Is said act unconstitutional as interferring with the judicial power of the courts of the United States?

THIRD:

Does it deprive the complainant of property in violation of the Constitution of the United States? States?

FOURTH:

Or, in violation of the Constitution of the State of Oklahoma?

FIFTH:

Or, in revoking the authority of the complainant to do business in the State of Oklahoma, is there an interference with interstate commerce?

SIXTH.

Is the power it attempts to vest in the Secretary of State such a power as he cannot exercise under the laws of the United States and the laws of the State?

SEVENTH:

Does the Act deprive the complainant of any privilege or immunity of a citizen of the United States?

EIGHTH:

> Does the act discriminate and deny to the complainant the equal protection of the laws?

NINTH:

> Are the fines prescribed excessive, and are they so intermingled with the validity of the act as to render the entire act void?

These eight questions are raised by the allegations of the bill and are found in the Twelfth Paragraph at pages 34 to 36 of the printed record, and are put in issue by the demurrer, which also puts in issue:

TENTH:

> Whether this proceeding is not in violation of Section 720 of the Revised Statutes of the United States.

The demurrer also raised the grounds more definitely stated in the answer which on exception were stricken therefrom.

All of these are in issue, because the third ground of demurrer was that the amended bill did not state such a cause as entitled the complainant to the relief prayed for against the defendants below, or either of them, and the first ground of the demurrer, that the subject of the suit was not within the jurisdiction of equity. Of course, if

the act is constitutional ,the action would necessarily be against the state. It is only when state officers proceed under a void law, or without law, that such an action is against them as individuals.

The demurrer is overruled.

Issues on Exceptions to Answer.

In addition the answer restated with greater definiteness grounds already raised by the demurrer, as follows:

ELEVENTH:

That the complainant, the Missouri Corporation, was never authorized to own or operate any property in either the Indian Territory, Oklahoma Territory, or the State of Oklahoma, and as such that it had no property rights to be injured; that it was a mere trespasser.

TWELFTH:

That the lines in the State of Oklahoma which the complainant had sought to combine together with parallel and competing lines, that the effect of the combination was necessarily to restrain trade, and as such was violative of the federal, territorial and state law, and that in taking away the right of the complainant to further operate in violation of law, no injury could be done it.

THIRTEENTH:

That all of the so-called rights of the complainant were attempted to be assigned to it by purchase or sale, or some other attempted method of acquisition from other corporations; that all of these rights were held subject to a condition, which condition had been violated by both complainant and its assignors so that there were no rights capable of assignments or maintenance, if assigned; that the complainant thus had by assignment or by purchase, or by maintenance, nothing, and had nothing to be damaged.

These three defenses were stricken from the answer by the action of the *court* in sustaining the exceptions of the complainant, (p. 72 of the printed record).

Judgment on Bill and Answer

The court then proceeded to ignore the denials of the answer and to render judgment on the bill and answer for the complainant. At the time of judgment on the pleadings, the statements of the answer not stricken out must be taken as true.

Rulings on Both Demurrer and Exceptions Assigned as Error Here.

The record thus presents practically twelve questions, nine raised by the bill and demurrer and three by the answer; the exceptions and the judgment ruling on the de-

murrer putting the first nine in issue in this court, through the assignment of errors, and the ruling on the exceptions and the judgment putting the last three in issue in this court, in the same manner.

STATEMENT OF THE RECORD.

B. Questions Now Raised.

FIRST: AMENDED BILL OF COMPLAINT.

The *Amended Bill om Complaint* was filed on the 22nd day of December, 1908, in the Circuit Court of the United States for the Western District of Oklahoma, wherein the St. Louis and San Francisco Railroad Company brought suit against Bill Cross, at that time Secretary of State of the State of Oklahoma, and Leo Meyer, Assistant Secretary of State.

Act of Defendants Below in Proceeding Under Statute.

The Bill alleged that under an Act approved on the 26th day of May, 1908, (set out on page 31 of the printed record) that the defendant, Bill Cross, and Leo Meyer, as Acting Secretary of State, attempted to declare the charter and authority of the company to do business within the State of Oklahoma, to be revoked and forfeited, by executing a written instrument, (set out in the bill of complaint at page 33 of the printed record), declaring the license of

the said complainant below to transact business in the State of Oklahoma, forfeited and revoked.

Citizenship of the Parties.

The Bill alleged that the defendants below were residents of the Western District of the State of Oklahoma, but that the complainant was a citizen and resident of the State of Missouri. That the defendant, Bill Cross, was Secretary of State of the State of Oklahoma, and that Leo Meyer was Assistant Secretary of State.

Amount Involved in Controversy.

The Bill contained allegations (p. 2 of Printed Record) that the amount involved was more than five thousand dollars, and that the controversy was between citizens of different States.

Allegations as to Acquisition of Railway Lines in Oklahoma by the St. Louis and San Francisco Railroad Company.

The bill alleges (Paragraph IV, pp. 2 to 30, both inclusive, of the printed record), that the complainant below owned and operated various lines of railway in the State of Oklahoma, and that said lines were built under various

acts of Congress by various corporations other than the appellee herein, and some facts as to the acquisition of said lines by the appellee were set out.

It is alleged in Paragraph V, (p. 30, printed record), that these various lines were all of them constructed and completed prior to the 16th day of November, 1907, the date upon which the State of Oklahoma was admitted into the Union.

In Paragraph VI, (p. 30 of the printed record), it is alleged that the legislation of Congress applicable to the Indian Territory, and the laws of the Territory of Oklahoma, invited the plaintiff to make investment in railroad enterprises in said Territories, and that its investments have amounted to a sum assessed by the taxing board of the State of Oklahoma at more than forty-seven million dollars.

Allegation that Laws of Territories did not Require License.

In Paragraph VII, (p. 31 of the printed record), it is alleged that under the laws in force in the Indian Territory and in the Territory of Oklahoma prior to Statehood, it was not required to secure from the Secretary of the Territory a license, and that the same was not secured, and that no such license has ever been secured from the

Secretary of State, but the plaintiff has continued to carry on its business as a common carrier under the laws in force at the time of the organization of the State and of the Constitution of the State, so far as applicable.

Let this be noted as bearing upon the question of whether the defendants could injure by revoking what the plaintiff did not need nor use.

Act of Secretary of State in Revoking License Under Statute.

In Paragraph XI of the amended Bill, (p. 34 printed record), it is alleged in the act of said defendants below in signing said instrument revoking the complainant's license and since the date of the signing of the same, the defendants below have continuously threatened and attempted, and are now threatening and attempting, to deprive the complainant of its right to do business in the State, and that the said acts of the defendants are because of the provisions of the said act of the State of Oklahoma approved May 26th, 1908, and that the effect of said instrument of writing revoking said license, unless declared by this court to be void and of no effect, will be to subject the complainant to numerous and sundry prosecutions, to annoying and harassing litigation, together with the possibility of having the various courts of the State entertain

actions charging the complainant with misdemeanors, wherein fines ranging from one thousand dollars to five thousand dollars for each day during which the complainant transacts business in this State may be assessed, and that therein it is averred the complainant is entirely without remedy at law, and the said injury is irreparable.

Grounds Upon Which it is Complained the Act of May 26th, 1908, is Void.

In paragraph XII, (p. p. 34, 35 and 36, printed record), the complainant asserts that the said act of the State of Oklahoma of the 26th day of May, 1908, is unconstitutional for the following asserted reasons:

Act Alleged to Destroy a Federal Right.

It is objected:

1. That the act is unconstitutional because it is contrary to and in violation of Section 2 of Article III of the Constitution of the United States providing that the judicial power of the United States shall extend to all controversies arising under the Constitution of the United States and the laws made under its authority, or between citizens of different states, in that the act directly and expressly attempts to defeat the jurisdiction of the courts of the United States of controversies arising under the

Constitution of the United States, and the laws passed in pursuance thereof, and of controversies between citizens of different states.

> Let it be noted that the ground was not prepared in this bill for the decision of the question whether it is an interference with interstate commerce for a state, as to a corporation authorized to do interstate business with its citizens to place in the balance the authority to do intra state business on the one hand, as against, on the other, the absolute parity of conditions and powers with those of domestic corporations, so that if it sought to exercise powers not exercisable by domestic corporations and repudiated the state's visitorial powers in the exercise, that the grant of power to do intra state business might not thus be lost.
>
> This alleged ground in this bill is only that the act cuts off resort to the federal court, yet the least analysis will show it does not do so.

Right to Impair Obligation of Contracts.

It is objected:

2. That the act of the state legislature is contrary to and violative of Section 10 of Article I of the Constitution of the United States, in that it is said to impair the obligation of a contract, to-wit, the alleged right of the complainant to continue, maintain and operate its road within the State of Oklahoma, by virtue of its contract with the government of the United States, and its contract with the Territory of Oklahoma, as thereinbefore set forth.

Yet these rights, whatever they were, were all subject to amendment and repeal.

Act Alleged to Seek to Deprive Complainant of Its Right to Conduct Business in Oklahoma.

It is objected:

3. That the act is contrary to and violative of Section 450 of the Constitution of the State of Oklahoma, in that it is said to seek to deprive the complainant of existing rights, contracts and claims in respect to its right to conduct its business as a common carrier in the State prior to the admission of the State into the Union.

Alleged to Interfere with Interstate Commerce.

It is objected:

4. Because the lines of the complainant form a connecting link between its lines of railway in other states and it is said to be necessary to conduct its business as a carrier between the states with these lines in Oklahoma, and that the effect of the enforcement of the act would necessarily and directly interfere with the interstate business of the complainant, by imposing an intolerable and prohibitive burden upon such interstate commerce, and thus be an interference with interstate commerce.

The bill states no facts showing how or why a lack of power to do intra state business will be prohibitive of interstate business. It cannot rest on the assumption that a carrier business is prohibited every time it is barred from either department of activity. For each set of earnings must be from reasonable rates, irrespective of the other set. (Smyth v. Ames, 169 U. S. 466). The present rates on interstate commerce should be increased or decreased until reasonable, without any consideration of the intra state earnings. The act does does not discriminate against interstate commerce, *nor is it alleged to have done so.*

These statements as to alleged interference are denied by the answer.

Alleged to Deprive Complainant of Property Without Due Process.

It is objected:

5. That the act purporting to give to the Secretary of State the right to revoke the license of the complainant is said to be violative of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and Section 16 of Article II of the Constitution of the State of Oklahoma in working a deprivation of property without due process of law.

Yet the act gives the Secretary no discretion.

Act Alleged to Deprive Complainant of Privileges and Immunities of Citizens.

It is objected:

6. Because it is alleged that the act denies to the complainant under pain of heavy penalties, the right to remove a cause to the Federal court which may be commenced in the State of Oklahoma, thereby depriving the complainant of the right to resort to the courts of the land, and is contrary to and violative of Section 1 of the Fourteenth amendment to the Constitution of the United States, in abridging the privileges and immunities of citizens of the United States.

> Yet the act does not prohibit resort to the federal court, and the fines are separable from the rest of the act.

Alleged to Deny to Complainant the Equal Protection of the Laws.

It is objected:

7. Because it is alleged that the act denies to the complainant as a foreign railroad corporation the right to appeal to the federal courts, whereas, it is alleged, this right is freely and fully accorded to domestic corporations in the State of Oklahoma, and all other persons within the State, and thereby denies to the complainant equal protection of the laws.

Yet it is plain that the act works alike upon all corporations.

Fines Alleged to be Excessive.

8. It is alleged that said act is unconstitutional because it provides that a corporation whose license has been revoked shall be subjected to a fine of not less than one thousand dollars nor more than five thousand dollars for each day that it continues to do business within said state, and that said provisions are contrary to the Eighth Amendment to the Constitution of the United States, and Section 9, Article II of the Constitution of the State, prohibiting the imposition of excessive fines.

For These Reasons Complainant Seeks Permanent Injunction.

For the above reasons a permanent injunction was sought against the defendants below to restrain them from revoking or attempting to revoke the authority of the complainant to do business in the State of Oklahoma, or from taking any proceedings under the said act of May 26th, 1908, and praying that the said act be declared unconstitutional.

SECOND. DEMURRER.

To this *Amended Bill of Complaint* the defendants below filed a demurrer, (p. p. 38-39, printed record), objecting (1) to the jurisdiction; (2) that the plaintiff was not entitled to the relief prayed for, and (3) that there were not sufficient allegations in the bill.

The court overruled the demurrer in an opinion found at pages 39 to 54 of the printed record.

THIRD. ANSWER.

The defendants below then filed an answer, admitting the citizenship of themselves and admitting the incorporation in Missouri of the complainant.

Admitting the official positions of the defendants;

Admitting that the amount in controversy is more than five thousand dollars.

Complainant not the Legal Owner of Lines in Oklahoma.

But denying that the complainant was ever the legal owner or proprietor of any railroad in the State of Oklahoma. They admit, (p. 55 of the printed record) that the complainant attempted to acquire the various railroad properties set out in the Fourth Paragraph of the Bill, but say that the Missouri corporation was never authorized by any authority in the Indian Territory to acquire by

purchase, lease, consolidation or otherwise any of the lines named in the Fourth Paragraph. And also averring that the Missouri corporation was not authorized to acquire said lines by the laws of the Territory of Oklahoma, except by the incorporation in Oklahoma Territory of a consolidated corporation in that territory of the lines lying in and operated therein. That the Missouri corporation either never complied with the provisions of law for the consolidation into such a domestic corporation in the Territory of Oklahoma, or else that if they did so that they entirely abandoned all rights thereunder, in repudiating the paternity of the State of Oklahoma by filing in the District Court of Comanche County a written statement claiming domicile outside the state of Oklahoma.

The answer avers that:

Complainant was Illegally Operating in Oklahoma for Two Reasons, (1) *That There Was No Authority of Law for It as a Missouri Corporation to Acquire Railroad Properties in Oklahoma, and* (2) *That the Lines Acquired Were Parallel and Competing Lines and as Such Forbidden to be Acquired, Combined and Operated Together by the Laws of the United States, the Laws of the Territory of Oklahoma, and Laws of the State of Oklahoma.*

The detailed facts showing that such acquisition was contrary to the anti-trust laws of the Territory of

Oklahoma, the State, and the United States, is set out in the answer, paragraphs (a) to (h), pages 56 to 61 of the printed record.

The defendants admit that the railroads spoken of were constructed prior to statehood, (p. 62), but they deny in paragraph 6 of the answer (p. 62) that the legislation of Congress invited into the Indian Territory or into Oklahoma Territory capital either for the purpose of forming a combination of parallel or competing lines of railroad to the effect and intent of restraining intra and interstate trade and traffic thereunder.

And the defendants in Paragraph 7 deny that there is any authority for the maintenance of said combination of parallel and competing railroads in the State of Oklahoma.

Act Operates Without Discrimination.

The defendants admit the passage of the act set out in Eighth Paragraph of the Bill.

They admit that the provisions of the Constitution of Oklahoma are as set out in the Ninth Paragraph of the Bill, but the defendants assert (p. 62 of the printed record) that the act is not discriminative, oppressive or unlawful, but on the contrary that it acts equally upon all corporations and puts them all upon an equality, and deny

that the act is an attempt to defeat the jurisdiction of the courts of the United States over controversies arising under the Constitution of the United States and laws passed in pursuance thereof.

No Contracts Violated, Only Legally and Properly Modified.

Defendants in their answer deny that the passage of the act impairs the obligation of any contract made either by the State of Oklahoma, or the Territory of Oklahoma, or the Indian Territory or the United States with either the complainant or its assigns, and the defendants say that because of the unlawful combination in restraint of trade set out in the answer, that no contract was ever made with the complainant, and that even though the complainant had legally and properly complied with the laws of the United States and of the Territory and of the State, in the operation of the railroads, yet, that the only contract ever made between any of the governments stated and the complainant was under Section 1068 of Wilson's Annotated Statutes of the Territory of Oklahoma, to the effect that foreign railroads complying with the laws of the Territory of Oklahoma, should within the Territory of Oklahoma, possess and enjoy all the rights, powers and privileges and franchises conferred by the laws of the Territory of Oklahoma upon domestic corporations, formed and operated

therein. That these and no further rights were ever given, granted or contracted, or held out, to any foreign corporation whatsoever, and that the said act does not deny to any corporation any rights conceded to any other corporation.

No Interference with Interstate Commerce.

The defendants deny that the act is in conflict with any portion of the Constitution of Oklahoma, and deny that it was an interference with interstate commerce, and deny that the act gave to the Secretary of State arbitrary power, and deny that the act deprives the complainant of its property, or is contrary to or in violation of any portion of the Constitution of the United States.

The defendants admit that they attempted to declare the authority of the complainant to do business in Oklahoma revoked and forfeited, but deny that the effect of the written instrument set out in the Tenth Paragraph of the Bill was void, and deny that their action improperly harassed and annoyed the complainant and deny that any injury or damage was done to the complainant.

Further the defendants deny the allegations contained in the 6th, 7th and 8th subdivisions of the Twelfth Paragraph of the Bill.

And further the defendants say that any action taken by them was taken by them in their official capacity, and that in point of fact the State of Oklahoma is the real defendant, and that therefore the Circuit Court was without jurisdiction.

They deny that the act of the 26th of May, 1908, was unconstitutional for any reason.

Further the answer sets out as to each of the lines, which in the State of Oklahoma the bill alleges the complaint acquired, allegations showing that in each case that Congress granted right of way to a corporation other than the complainant upon a special condition, which condition said corporation violated. That said special condition was as to the charges to be made in the Indian Territory or in the Territory of Oklaoma, as the case might be, and the the answer alleges that because of the violation of said condition that said corporation secured no rights in either the Indian Territory or in Oklahoma Territory previous to Statehood.

Finally, defendants say (p. 69) that the complainant has not done equity in the very matter of the ownership and operation of the railroad lines in Indian Territory or Oklahoma Territory, or the State of Oklahoma, and that the Bill does not show equity in the very matter of the operation of said lines because of the facts aforesaid, and

that therefore the complainant has suffered no injury, and the defendants deny that the signing of said instrument on their part was done with any knowledge, information or intent to forestall this action, but was done because it was their duty to perform the same, and ask to be discharged.

FOURTH. EXCEPTIONS TO ANSWER.

To this answer the complainant filed exceptions to all the matter contained in the Fourth Paragraph of the answer, that is, the matter asserting (1) that the Missouri corporation was never authorized to acquire any railroad property in either the Indian Territory or Oklahoma Territory, and (2) that the combination of parallel or competing lines was in violation of the anti-trust laws of the Territory or State or the United States, and (3) the complainant excepts to all that paragraph of the answer marked 12, that is, the portion in which it is averred that the railway corporations which were granted rights of way through Oklahoma and Indian Territory by Congress, which lines were subsequently attempted to be acquired by complainant, that such grants were upon an express condition that had been violated.

By *Stiuplation* between the parties (p. 71 of the record the present Secretary of State, Ben F. Har-

rison, was substituted as defendant, and an order to that effect was made by the court. (p. p. 71-72 of the printed record.)

The action coming on for final hearing, the court (p. p. 72 and 73 of record) sustained the exceptions of the complainant, to the answer of the defendants, and struck out the parts objected to.

FINAL ORDER.

Thereafter the case was set down for hearing upon the bill and answer, and the court found for the plaintiff against the defendants, made the temporary order permanent, and forever enjoined the defendant, and all persons acting by him from revoking or attempting to forfeit the authority or charter of the complainant to carry on its business as a common carrier in the State of Oklahoma, or from taking any proceeding against the complainant under the said act.

Petition for Appeal with assignments of error was filed, (p. p. 73, 74 and 75 of the record), appeal allowed and bond approved, notice of citation being waived. Stipulation as to what should be in the record was made by the parties. A waiver of citation on appeal was filed, and the appeal filed here on the 25th day of May, 1911.

II.

SPECIFICATIONS OF ERROR.

The *Assignments of Error* herein were: (p. p. 73-74, Rec.)

FIRST: That the Court erred in overruling the demurrer.

SECOND: That the court erred in sustaining the exceptions.

THIRD: That the court erred in making the temporary order of injunction permanent upon the bill and answer and in enjoining the defendants from proceeding under the statute and in holding that the statute was void as to the complainant.

III.

ARGUMENT.

ORDER OF DISCUSSION.

The various questions are more readily grasped by a proper grouping of them.

Thus, we shall discuss them in this order:

A. The First Question:

What is the purpose of the act?

And, the second question:

Is the federal judicial power limited by the act?

B. The eighth question:

Does the act deny the equal protection of the law?

And, the Seventh question:

Does the act deprive a citizen of a privilege or immunity?

C. The third and Fourth questions:

Does the act deprive the complainant of property? Especially in view of the answer including the eleventh, twelfth and thirteenth questions.

D. The sixth question:

Is the Secretary's power arbitrary?

And, the tenth question:

If the forfeiture is because of the finding of the *nisi prius* judge, can the consequence be enjoined?

E. The Fifth question:

Is the act an interference with interstate commerce? Especially in view of the answer?

This is the paramount question, to whose correct solution the previous accurate answering of *A, B, C* and *D* is necessary.

a. Subsidiary consideration is:

Ninth: The separable character of the penalties.

A. THE PURPOSE OF THE ACT IS TO ENFORCE THE STATE'S VISITORIAL POWERS OVER CORPORATIONS DOING BUSINESS WITHIN ITS BORDERS.

Notwithstanding the claim that the purpose of the act is to prevent foreign corporations from resorting to the

federal courts in Oklahoma, we insist that its plain purpose is on the contrary to provide only a means to facilitate the exercise of the state's visatorial powers.

We reach this conclusion from two considerations. First, because of what the act fails to do, and second, because of what is clearly done by constitutional and statutory provisions.

We may concede that some misguided persons may even have thought that an act of this character would compel foreign corporations to resort for litigation to the courts of the state, to whose marts they resorted for commerce. We concede that the views of such persons is too narrow.

But it is immaterial what such persons thought or failed to see or even what the motives of the legislature were.

Calder et al v. Mich., 218 U. S. 591.

First: Act Not Intended to Hinder Jurisdiction Because Ineffective for that Purpose.

The best reason for believing the act did not intend to hinder the federal courts is because it must necessarily fail to accomplish that purpose.

Before this act was passed (1908) this court in May 18, 1903, had held that the granting of domesticity by a

state upon the adoption of a corporation did not destroy that company's citizenship as of the state of its original creation for the purpose of the jurisdiction of the federal courts.

Southern R. Co. v. Allison, 190 U. S. 330.

It must be presumed that the Oklahoma legislature had as much appreciation of the force of that opinion as the rest of the world. It is therefore highly unlikely it intended to accomplish what it had already learned was not to be done.

Second: Constitutional and Other Statutory Provisions to be Considered as in pari materia Urge That This is But a Visitorial Statute.

One of the best reasons for anticipating that this statute is a visitorial statute is that the legislature of the state both in the constitution and other statutes shows a settled purpose to curb the opportunities for evil of tramp corporations! By requiring in the Constitution (Section 6, Article IX) public service corporations to maintain offices in the state wherein the stock, books of the company, and other matters shall be kept for inspec-

tion; (2) by providing in the Act of March 11, 1909, for the domestication of railroads and the forfeiture of domestic rights under circumstances similar to this act.

We think these throw a strong flood of light upon the meaning of the act involved in this case, that of May 26, 1908.

Section 6, Article IX is plainly and simply a regulation for visitorial purposes.

It provides:

> * * * * * "Every railroad or other public service corporation organized or doing business in this state, under the laws or authority thereof, shall have and maintain a public office, or place in this state, for the transaction of its business, where transfers of stock shall be made, and where shall be kept for inspection by the stockholders of such corporation, books, in which shall be recorded the amount of capital stock subscribed, the names of the owners of stock, the amounts owned by them, r ectively; the amount of stock paid, and by m; the transfer of said stock, with the date of transfer; the amount of its assets and liabilities, and the names and places of residence of its officers, and such other matters required by law or by order of the Corporation Commission. The directors of every railroad company, or other public service corporation, shall hold at least one meeting annually in this State, public notice of which shall be given thirty days previously, and the president or superintendent of every railroad company and other public service corporation organized or

doing business in this state under the laws of this state or the authority thereof, shall report annually under oath, and make such other reports as may be required by law or order of the Corporation Commission, to said Commission their acts and doings, which report shall include such matters relating to railroads and other public service corporations as may be prescribed by law. The Legislature shall pass all necessary laws enforcing, by suitable penalties, all the provisions in this section.'

This court will not overlook the imperative order contained in the last sentence directed to the Legislature commanding the enactment of suitable legislation to carry this into effect.

Nor can any statute vitalizing that section be found except the act of May 26, 1908, involved in this action, and that of March 11, 1909, which is of the same substance and meaning, Sections 1400-1407, Compiled Laws of Oklahoma, 1909.

Sections 1400 to 1405 provide for the domestication of companies within certain limits authorized to construct railroads in either of the Territories (Oklahoma or the Indian Territory) before Statehood by the acceptance of the constitution and the laws applicable to domestic corporations.

Section 1406 provides for forfeiture of rights for failure to commence work.

And Section 1407 provides:

> "An attested copy of the writing, in which any corporation which becomes a domestic corporation hereunder, claims a domicile elsewhere than in this state, shall be forthwith made out by the clerk of the court in which such writing is filed, and shall be mailed by such clerk to the Secretary of State. When such attested copy is received by said Secretary of State, he shall immediately enter upon the records of his office an order cancelling and annulling all charter rights of such corporation and such corporation shall thereafter enjoy only the privileges of a foreign corporation and shall forfeit all rights hereunder."

We submit that these statutes being so closely similar must be held to have at least these common intents:

1. To forfeit only the right to do intra state business.

2. To forfeit this right because of the repudiation of the state's paternity and inspecting power.

3. To forfeit it only of companies accepting the State Constitution.

And, in view of the command to the legislature contained in Section 6 of Article IX of the Constitution, these statutes must be regarded as attempts to enforce its provisions, and as such to have a visitorial meaning and purpose only.

Let us consider the Oklahoma act. This is set out in full in this brief under the head of "The Questions in the Case." It appears in full on pages 31 and 32 of the printed record. It will only be necessary to consider some of its provisions.

It provides in Section 1 that any corporation which has complied with or may comply with the constitution and laws of the State of Oklahoma, that the domicile of such corporation for transacting business within the State of Oklahoma, shall be in such state. What more adequate method of enforcing Section 6, Article IX?

It then provides in Section 2 for the revocation of the license of such corporation for repudiation of such domicile by a declaration in writing in any court of the state of a domicile elsewhere.

It provides in Section 3 that whenever such a declaration is made that the Judge of the court shall notify the Secretary of State of the fact by an authenticated copy of the declaration.

In section 4 it is provided that upon the receipt of such copy that the Secretary of State shall declare the charter revoked.

In section 5 there are provisions for fines not less than one thousand dollars, nor more than five thousand

dollars for each day, or part thereof, that any corporation whose license has been revoked shall continue to conduct business in the state.

The sixth and seventh sections are not essential.

It is very clear that the so-called license or charter is only as to domestic business in the state of Oklahoma. The language is, "license or charter to do business within the State."

The right to do an interstate business being derived from the Constitution of the United States, the State of Oklahoma was of course without power to license or charter such business, and therefore it will not be questioned that all that the act refers to, and all that the actions of the defendant referred to, was the authority of this corporation to do domestic business in the state of Oklahoma.

If any doubt on that point existed, it would disappear from reading Section 1407 of the Compiled Laws, *supra*.

The question arises as to what is the meaning of the act of May 26th, 1908.

It will be noticed that its provisions only go as to those corporations who comply with the constitution and laws of the State; that such corporations only are domiciled in the state.

It is therefore necessary to determine whether or not the appellee comes within these provisions.

There is no general allegation contained in the bill to the effect that the complainant therein has complied with the constitution and laws of the state. Nor does it, by separate averments, seek to establish that fact. It does allege in Paragraph IV that it owns and operates a system of railroads. Now if the complainant below did not comply with the constitution and laws of the state, certainly the provisions of the act would not apply to it, because it is only those corporations which shall be domiciled in the state which complied with the laws of the state.

If, on the other hand, it is to be presumed that the complainant has complied with the laws of the state, then it must be presumed that the complainant has complied with Section 6 of Article IX of the Constitution. It is our contention that Section 6 of Article IX of the constitution requires the domicile of every railroad operating in the state to be in the State of Oklahoma, and that there is no essential difference in this respect betwen this section of the constitution, and the act of May 26th, 1908.

In other words, we consider the act of May 26th, 1908, to be an act conferring domestic domicile upon corporations doing domestic business in that State, and for-

bidding such corporations from claiming a domicile elsewhere. We urge that this is the only meaning of the act. But it is insisted that that is not its true meaning. That that is only its superficial provision. That its only meaning is to interfere with the laws of the United States as to interstate commerce, as to vitality of contracts, and as to the rights to resort to the federal courts. Let us therefore examine it from that point of view.

Difference Between the Oklahoma Act and the Other Acts Involved in the Decisions of this Court. Other Acts Involved in the Decisions of this Court. Other Acts Discriminate Against Foreign Corporations. Oklahoma Act Does Not.

It will be claimed that the Oklahoma Act is within the reasoning of Herndon v. C. R. I. & P. Ry. Co., 218 U. S. 135;

Pullman Company v. Kansas, 216 U. S. 56;

Ludwig v. Western Union Tel. Co., 216 U. S. 146;

Western Union Tel. Co. v. Kansas ,216 U. S. 1;

Southern Co. v. Greene, 216 U. S. 400.

In all of those cases the statute was held to be either direct interference with interstate commerce, or else dis-

criminated against companies doing interstate commerce, and in each instance was held to violate the obligation of a contract.

It is our contention that the Oklahoma Act does none of these things.

We wish to discuss it later on, from the point of view of discrimination; from the point of view of violation of contract, and as to interference with interstate commerce.

It will be noticed that the other acts operated upon foreign corporations differently than upon the domestic corporations, and thus caused a discrimination against the foreign corporations engaged in interstate commerce.

It is our contention, however, that the Oklahoma Act works no such discrimination, and therefore is to be decided under the authority of

Security Co. v. Prewitt, 202 U. S. 248;

Doyle v. Continental Ins. Co., 94 U. S. 535;

National Council v. State Council, 203 U. S. 163.

It was pointed out that the first section of the Oklahoma Act simply provides that the domicile of all companies complying with the constitution and laws doing domestic business in the state, shall be in the state.

It was pointed out that if a corporation fail to comply with the law, to oust it would not be a discrimination, whereas, if it does comply with the law, then the effect of the first section is that its domicile is in Oklahoma.

Now, this section does not in any way deprive the corporation of its right to resort to the federal court by removal or original action for any reason that an Oklahoma citizen might do the same; nor does the law placing the domicile of the company in Oklahoma operate so as to destroy the foreign citizenship of the company for the purpose of resort to the federal court by removal or original action because of diversity of citizenship. The citizenship of the state originally creating the corporation remains for this purpose.

> Southern Railroad Co. v. Allison, 190 U. S. 330, 332.

Nor if the diversity of citizenship be set up by some one other than the corporation, for instance, a stockholder, (as in Shepard v. Northern Pacific and Railroad Commission v. Minnesota, pending in this court at this term.

Nor if the assertion of foreign domicile be made in some other state will there be unfavorable action.

It is apparent from Section 3 that the license or charter to do business within the state of a corporation tran-

sacting business within the state, which shall claim or declare in writing before any court of law or equity within this state, domicile within another state or foreign country, that only on these conditions, upon such declaration, shall the authority to transact the business be revoked.

It is clear, therefore, that on its face the act instead of being only intended to interfere with the jurisdiction of the federal court, works no such interference, but upon its face the act only is one providing a domicile in the state for corporations doing business in the state, and providing a punishment to such corporations to work equal and alike both in cases of foreign and domestic corporations.

It is our contention that if the act be analyzed, and if it be found that no single element of the act is itself unconstitutional, and that no single element works upon any other element, or all other elements in a way so as to make itself or them unconstitutional; in other words, if all parts are free from vice, then the whole cannot be vicious.

Now, it will no doubt be conceded that the legislature might forfeit the domestic license—or franchise of one of its own corporations, because of unauthorized change in domicile. It will no doubt also be conceded that the leg-

islature might domicile within the state of Oklahoma all foreign corporations doing a domestic business in that state.

These are all the elements of the act so far as the effect on the appellee is concerned. It must be conceded that as far as the elements of this act are concerned that they are not subject to criticism.

It also cannot be claimed that either of these elements works upon the other in any way to make the element otherwise above criticism, subject to criticism, because though the foreign corporation be domiciled in the state, yet the right to resort to the federal court for any reason remains with it. Nor is there, as in the case of the other statutes examined before this court, any unequal working of the statute as between foreign and domestic corporations.

No objection can seriously be imposed as to the right of the state to domicile within it all corporations doing intra state business within its limits.

This act differs from all other acts which have been charged with the same vice in that this act places all corporations doing intra state business on a parity, whereas the other acts complained of in each instance placed the foreign corporations at a discrimination. If the other acts

were annulled because they discriminated certainly this act should not be annulled because it removed all discrimination.

It will be noted that the statute in question is not one directed at foreign corporations at all, but at all corporations, requiring that the domicile of all persons, firms or corporations conducting a business within this state shall be deemed to be in this state, and that the license or charter of any such person, firm or corporation ,to do business within the state of Oklahoma shall be forfeited if such person, firm or corporation shall claim or declare in writing a domicile within another state.

"Domicile" is "residence.'

Thompson, Corporations, 2nd. Ed., Sec. 490.

Some decisions have made a distinction between citizenship and domicile.

Id. Sec. 491.

Although there is a presumption of law that the citizenship is that of the residence.

Id. Sec. 492.

And as far as jurisdiction in the federal courts is concerned, there is an indisputable presumption of law that the citizenship of corporations is in the state which originally created them.

But this does not in any way interfere with the requirement that corporations be domiciled in the State or the prohibition against such corporations having two domiciles, one in and one out of the state, and the requirement that residence should not be subject to change, and the provision that the effect of an attempt to migrate might be the forfeiture of the rights in this state.

Thompson Corporations, 493, 494, 495.

The case of Matrine v. Insurance Company, 53 N. Y. Appeals, 339, recognized that the state might domicile within it foreign corporations doing business within it. This is what the Oklahoma statute does in the first section. Then in the second section it forbids the repudiation of the domicile. The repudiation of domicile is but the solemn admission of the corporation that it refuses to comply with the first section of the act. It has several times been held that the legislature may punish by a forfeiture a refusal to maintain offices in the state upon those corporations within it. This was the result of the holding in State *ex rel* Safford v. Topeka Water Company, (Kan.) 52 Pac. 422.

To the same effect in Aspinwall et al v. The Ohio & Mississippi Railroad Company, et al, 20 Ind. 492, where a railroad was forbidden to change its domicile ,and

in State ex rel Attorney General v. P. & N. Lumber Co., (Minn), 59 N. W. 1048, that the reason for this was that the books and place of business should be opened to the fullest visitatorial power of the state.

A very strong and well reasoned case to the effect that a change of domicile is a good ground of forfeiture is that of Simmons v. Norfolk & Baltimore Steamboat Co., 113 N. C. 147, 22 L. R. A. 677.

To the same effect is the strong case of State ex rel Attorney General v. Milwaukee Railway Co., 45 Wis. 579.

And it was conceded in Commonwealth v. Pittsburg R. R. Co., 58 Pa. St. 26, that a statute to that effect would have been good in Pennsylvania. Only, in the case last cited the forfeiture was refused because there was no statute.

The case of North and South Rolling Stock Co. v. People, 147 Ill. 234, 24 L. R. A. 462, recognized that if the charge of migration had been proved it would have been good ground for forfeiture.

The case of State v. So. Pacific, 24 Tex. 78, recognized that the meeting of the stockholders out of the state might be made a statutory ground for forfeiture.

To the same general effect is the case of People v. Oakland Bank, 1 Douglas (Mich.) 282, and Huglar et al v. Craigin Cattle Co., 40 N. J. Eq. 392.

All of these cases strongly assert the right of a state by statute, to require a particular location in the state.

From the foregoing we deduce and assert these propositions:

FIRST: That the act of the State of Oklahoma under consideration is one properly within the police power of the state. That its purpose is to subject corporations doing intra state business within the state to the full visitorial and regulative powers of the state, by requiring a domicile in the state, together with the attendant circumstances of the persons of the officers, books, papers, etc., within Oklahoma.

In other words, the act amounts to a command that there shall be no tramp corporations in Oklahoma for its intra state business.

SECOND: We urge that the state has the same right to require a domestic domicile of foreign corporations doing intra state business, as it would have of its own corporations.

THIRD: That the state may oust a corporation repudiating its creative powers, whether such corporation be one of its own children or one of its foster children.

This is made the clearer when we see that the legislature has repeated the same thing, in effect, one year later, by using terms that are a little bit clearer.

Compiled Laws of Oklahoma, 1909, Snyder, Supra, in Sections 1400 to 1406.

FOURTH: That a foreign corporation is left the right to resort to the federal courts upon any ground that a citizen of the state might resort to those courts, and in addition to the right given by the laws of the United States for a resort to the federal court, either by removal or original action, because the domesticity of the citizen is not taken away, although the consequence of the claim of foreign domicile will be to prevent it from doing further intra business in the state. As long as the corporation is left free to exercise the option of remaining in the state as a domestic corporation, or of repudiating the domicile of the state, and losing its domestic privilege, we urge that this cannot be an unconstitutional exercise of state power, provided it is not administered in an arbitrary or discriminatory manner.

B. Seventh Question: DOES THE ACT DEPRIVE A PERSON OF A PRIVILEGE?

Or the Eighth Question: DOES IT DENY EQUAL PROTECTION OF THE LAW?

If we have now determined that the act should *prima facie* be sustained as a proper exercise of the state's police power for the purpose of visiting or inspecting the corporations doing domestic business within its borders, the next question is does it in violation of the XIV Amendment discriminate or deprive any person of a privilege accorded by the constitution?

The Oklahoma Act does not Discriminate Against Foreign Corporations.

It will be noticed that the Oklahoma Act, unlike the Missouri Act in the Herndon case, is not directed against foreign corporations. The Missouri act specified none other than any foreign or non-resident railroad corporation, (218 U. S. 151), whereas the Oklahoma act is a prohibition against *any* corporation which, having been domiciled here, should claim or declare, in writing, a domicile in another state.

It was also held that the Missouri act prohibited the foreign corporation from resorting to the federal courts for any of the reasons for which a citizen of Missouri might

resort to those courts. The Oklahoma act does none of this.

It was also held that the Missouri act violated a contract made between the railroad company in the state of Missouri, and we will hereafter show that the Oklahoma act does not have that effect under the next head.

Likewise the particular act upon which four members of this court held that the Kansas Act, discussed in Western Union Telegraph Company v. Kansas, 216 U. S. 1, was unconstitutional, was that it required the company to pay a fee for a license to do intra state business in Kansas, which fee was calculated upon the extent of the capital employed both in the State of Kansas and in interstate business there and elsewhere, whereas, no such requirement was made of domestic corporations whatsoever.

The Bush Act (216 U. S. p. 3) only provided that corporations of other states or territories should apply to the charter board, and made no such requirement of the domestic Kansas corporation.

The Pullman case, 216 U. S. 56, of course, passed upon the same law.

The Arkansas Act, considered in Ludwig v. Western Union Telegraph Company, 216 U. S. 152, was only directed at foreign corporations. Corporations theretofore

incorporated in the State of Arkansas, (Sec. 3, p. 154) were exempted from the operations of the statute. (4th ground of complaint, p. 158).

Likewise in Southern Railway v. Greene, 216 U. S. 400, the principal ground of objection was that the additional franchise tax for the privilege of doing business within the state was to be levied against foreign corporations and not against domestic corporations carrying on precisely similar business, and it was held that the state was without authority to classify foreign and domestic corporations differently for this purpose. (p. 417.)

But all of these objections are indubitably absent from the Oklahoma Act. Unequivocally the state does not by this act deny equal protection of the law to the foreign and domestic corporations within its borders.

The eighth question, therefore, must be answered in the negative.

Act Does Not Abridge Privilege and Immunity of Citizenship.

The obvious answer to the seventh question is that a corporation is not a citizen within the meaning of the constitutional provision as to privileges and immunities guaranteed by the XIVth Amendment.

Orient Ins. Co. v. Daggs, 172 U. S. 557;

Tullis v. Lake Erie R. R., 175 U. S. 351;

Farmers etc. Ins. Co. v. Dobney, 189 U. S. 304;

Waters Pierce Co. v. Texas, 177 U. S. 45;

Hawley v. Hard. Co., 72 Vt. 124, 47 Atl. 402.

C. DOES THE ACT DEPRIVE COMPLAINANT OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW?

This brings us to the consideration of whether the statute deprives the railroad company of its property within the meaning of the Fourteenth Amendment to the Constitution of the United States, the third question; and because the language of the Oklahoma Constitution is exactly in the same terms, and, of course, has exactly the same meaning.

The Only Contract Made with the Company was That to Give It Parity With Domestic Corporations in the State.

It is our contention that the only contract made with any foreign corporation either by the United States, the Territory of Oklahoma, or the State of Oklahoma, was that such corporation should receive the same treatment as similar domestic corporations in the State of Oklahoma.

In other words, that while we admit and urge that American Smelting Co. v. Colorado, 204 U. S. 103, is the law which is applicable; but the facts are unlike. The facts were in that case that there had been a contract with the state to treat this corporation on the same terms as a Colorado corporation, and that it was the breach of this contract, therefore, which the court decided could not occur, but that it would not have been a breach of that contract to have treated the American Smelting Company upon the same terms as a Colorado corporation. That exactly the same condition existed in Oklahoma, and that under the territorial and state laws the only contract was that a foreign corporation should be treated as if it were a domestic corporation, and that any law that put them upon a parity would not be a breach of that contract.

Statements of Bill Exclude Deprivation of Property.

We will take it as fundamental that this court will not pass upon the constitutionality of an act if there are other decisive matters in the case from which a determination can be reached irrespective of the constitutional question.

In this case there could be no deprivation of property because of the allegations contained in the bill of complaint. On the theory of the bill appellee was incapable of

receiving any injury from the action of the defendants below, and therefore that revocation upon the railroad's own theory was a *brutem fulmen*, and in no wise capable of injuring it.

We desire to establish first the proposition that from the bill itself complainant had no license subject to revocation in the State of Oklahoma, and therefore could not have been injured by such revocation.

In the Seventh Paragraph of the bill, (p. 31 of the printed record) the complainant below alleged as follows:

> "Your orator further shows that under the laws in force in the Indian Territory, and in the Territory of Oklahoma, prior to the organization of the State of Oklahoma it was not required to secure from the Secretary of said Territory a license, and that it did not secure from said Secretary any license, and that it has not since the organization of the State of Oklahoma at any time procured from the Secretary of State of the said State of Oklahoma any license or authority to transact its business in said state, but has continued to carry on its business as a common carrier therein under the authority of the laws in force at the time of the organization of said State and of the constitution of the said State of Oklahoma insofar as it was applicable."

No Deprivation Unless Something Already Had Was Taken.

It is very plain therefore that in the revocation or forfeiture of the license or charter set out in the act of May 26, 1908, and in the instrument of writing signed by the defendants below attempting to revoke or forfeit its license or charter, no injury could have been done the complainant, unless such revocation or forfeiture affected the rights which it claims to have received prior to statehood, which it says in the Seventh Paragraph of the iBll was under the authority of the laws in force at the time of the organization of the state and of the constitution of the state. These rights, it claims in Paragraph Nine, were defined by Section 1 of the Schedule to the Constitution by that provision to the effect that no existing rights should be affected by the change in the form of government, but all should continue as if no change in the form of government had taken place.

Claims Under Federal Laws.

Complainant claimed that under various acts of Congress, for instance, the earliest act of the 27th of July, 1866, granting right of way to the Atlantic and Pacific through the Indian Territory, and the next, in point of time, the Act of August 2nd, 1882, granting right of way to the St. Louis & San Francisco Railway Company

through the Indian Territory, and various subsequent acts of Congress granting right of way to various other separate corporations, conveyed to them the right to do both intra territorial and interstate business; that it has acquired from these corporations all of their rights, and in this way possesses the right contracted with the United States and Oklahoma Territory to do business in the State of Oklahoma, which is of such a nature that it needs no license or charter from the State of Oklahoma to continue to do the same business in the state thereafter erected out of the said territories.

Federal Rights as to Municipal Affairs Died with Statehood.

But the consequences and rights growing out of such acts of Congress granting right of way as affected by Statehood, was passed upon by this court at the last term in two cases, to the effect that no rights internally as to the state were granted by such acts as to have any force after statehood, except the same be after statehood especially granted by the state. Not only the first section of the Schedule to the Constitution, upon which the complainant below relies, but in addition the second section of the Schedule, providing that all laws in force in the Territory of Oklahoma at statehood should be enforced in the State, also the similar provision of the Enabling Act, all were

urged to this court as reasons why the limitations contained in those acts granting rights of way should still be held to govern the conduct of the grantees; but this court held that upon statehood Oklahoma was admitted into the Union upon an equality with the other states, and that nothing as to its internal affairs was under the control of Congress, nor did any previous congressional provision apply after Statehood except the state especially established it so by its constitution and the laws, and, in effect, the court held that the first and second provisions of the Schedule were not sufficient to establish these rights as continuing in the railroads, because it held that they were not sufficient as establishing the limitations for the benefit of the public.

The cases referred to are:

State of Oklahoma, ex rel, v. A. T. & S. F. Ry. Co., 220 U. S. 277;

State of Oklahoma, ex rel, v. C. R. I. & P. Ry. Co., 220 U. S. 202.

In the first case it was especially urged upon the court that the provisions of the Schedule were such as to make both the grant and its limitations not only federal law for the Territory of Oklahoma, but after Statehood state law for the State of Oklahoma, but the court held that the limitations were no longer in effect. It must necessarily fol-

low that the grants thereby made were no longer in effect so far as they undertook to deal with the municipal affairs of the State of Oklahoma.

And likewise in the subsequent case of Coyle v. Smith, et al, 221 U. S., upon the argument the previous cases of Oklahoma, ex rel, v. A. T. & S. F., supra, and Oklahoma ex rel C. R. I. & P., supra, were referred to from the bench, as being in support of the argument which at that time was being urged by the state, to-wit, that Congress was without authority to make a law which after statehood would have any effect in the State of Oklahoma as to the internal regulation of that state, except by the express re-enactment thereof by the Constitution of the laws of the state or the laws passed pursuant thereto.

From a consideration of all the cases, beginning with Pollard's Lessee v. Hagan, 3 How. 212, through Permoli v. First Municipality, 3 How. 589, State of Oklahoma v. A. T. & S. F. 220 U. S. 277, to and including Coyle v. Smith, et al, 221 U. S. ...., it must be held to be the settled law in this court that no provision of Congress made during territorial days dealing with the power of the state of a municipal nature is in effect after statehood, either by way of limitation or by way of grant, unless reaffirmed by the state. Therefore the rights of the com-

plainant must have been under the Constitution and the laws passed in pursuance thereof or otherwise they did not exist.

Did the State Constitution Affirm Federal Grants?

A careful analysis of Article IX of the Constitution, which is that dealing with public service corporations, will show that there is in the Constitution of the State not a suggestion that a foreign corporation shall be authorized to conduct a railway business in that state.

Section 1 of that Article deals with definitions.

Section 2 provides that "every railroad.....organized or authorized to do a transportation or transmission business under the laws of this State" shall have certain rights.

Section 3 provides for the interchange of freight and passengers between railroads, and in no way extends or broadens the rights conferred by Section 2.

Section 4 and Section 5 deal with oil pipe companies, telegraph and telephone lines, respectively.

Section 6 provides that all railroads heretofore or hereafter constructed shall be public highways, and then provides that "every railroad or other public service cor-

poration organized or doing business in this state, under the laws or authority thereof, shall have and maintain a public office or place of business" etc., providing, in effect, for a domicile in the State.

Section 7 provides that the property of said corporations shall be subject to execution.

Section 8 is a provision against the consolidation of the stock, property, or franchise of competing or parallel lines.

Section 9 is a provision against the consolidation by private or judicial sale, or otherwise ,of any railroad company organized under the laws of this state with any other railroad organized under the laws of any other state or of the United States. This section does not contain a grant to a foreign corporation to operate a railroad in this state. The grants must be construed against the grantee, and the language must clearly carry the grant. This is a negative provision and means that no corporation operating in this state and organized under the laws of this state shall consolidate in any way with any other transportation company organized under any other laws wherever it may be.

Section 10 is as to the construction of railroads through cities and upon highways.

Section 11 is a provision that "no railroad, transportation, transmission or other public service corporation in existence at the time of the adoption of this constitution shall have the benefit of any future legislation, except on condition of complete acceptance of all the provisions of this constitution applicable to railroads, transportation, transmission companies and other public service corporations: Provided that nothing herein shall be construed as validating any charter which may be invalid."

The other provisions of that article deal with facts of transportation and regulation thereof by the Corporation Commission of the State.

Constitution Fails to Recognize Rights in the State of Foreign Railroad Companies.

There is thus, from a negative point of view, a prohibition against a foreign corporation doing domestic railroad business in the State of Oklahoma, in that, no specific grant of such authority can be found, nor can there be found any grant that fairly tends in that direction.

It cannot be that Section 1 of the Schedule meant to grant a specific exemption from the operations of the constitution upon all those corporations which rightfully or wrongfully claimed to be ,or were attempting to be, operating in either the Indian Territory or Oklahoma Ter-

ritory at Statehood. The Schedule is to be construed in connection with all the rest of the Constitution, and Section 1 only meant to provide that actions, contracts or claims should go on without being affected by the change in form of government. The emphasis is upon the form of government. It did not mean that the rights in existence at the time of the constitution, was by the provisions of Section 1 of the Schedule, meant to be guaranteed to continue forever. If this had been the meaning, it would have been necessary to have decided the capital case otherwise than it was decided, in that the provisions of the Enabling Act certainly stated some kind of a right, and some kind of a contract, and yet, it was distinctly held that that right and that contract, whatever it was, was not only changed by but was absolutely obliterated by the admission of the State in to the Union. And, therefore, all that Section 1 means is that right, actions and contracts not inconsistent with the new state or the terms of equality with the other states, shall continue. But as the grant of power to do internal business in the State of Oklahoma is of the very essence of state power, it is not meant that such a grant is to be continued by the terms of Section 1 of the Schedule.

It will therefore appear that so far as the constitution and laws of the state are concerned that the complainant

not only had no license but had no right, and nothing could have been taken away by the revocation which it claims.

If, however, we are wrong in the contention that the appellee by its own pleading was in Oklahoma without any right therein and could have been affected injuriously so as to constitute a right of action in it, let us analyze these claims.

Anaylsis of Federal and Territorial Claims.

The railroad claims it has contract rights made with the United States and the Territory of Oklahoma. Let us discuss these provisions separately.

It will be noted that the state has passed no legislation on the subject, except that already adverted to under the first heading of this argument and the act which is involved in this case, and other acts which expressly provide that the companies shall domesticate in the State of Oklahoma.

It has been pointed out that there is no constitutional failure in the constitution requiring as it did, in effect, of a railroad corporation to domicile in the state under Section 6 of Article IX, and in omitting to assert the right of a foreign corporation to do a transportation business in the state, and the provisions of the act in question. Nor will

counsel be able to point out, we venture to say, any provision of the State of Oklahoma, giving this corporation any rights in the state.

The question will be, in fact, as asserted in its bill, as to what were its rights previous to statehood.

Oklahoma Territorial Acts Only Guaranteed Parity with Domestic Corporations.

The Nebraska statutes put in force in Oklahoma Territory by Act of Congress (the Organic Act) can be considered in connection with the other federal acts on the subject, and we will say, therefore, that the first act of the Territory of Oklahoma directly on the subject, will be found in the act of 1890, borrowed and adopted from the Territory of Dakota, 1887, and published as Section 1255 of the Compiled Laws of Oklahoma, 1909, Snyder, to the effect that "Every grant of corporate power is subject to alteration, suspension or repeal, in the discretion of the legislature."

Furthermore, the same legislature adopted what is now printed as Article IX of Chapter 20 of the Compiled Laws of Oklahoma, 1909, Snyder, though the same has been somewhat modified and amended.

That Article provides for domestic railway corpora-

tions in the Territory of Oklahoma, and also provides in what is printed as Section 1358 of Snyder's Compiled Laws, for the consolidation of a railroad in the Territory of Oklahoma with railroads outside of that territory, but the consequence of the consolidation was that such consolidated corporation would be subject to all the restrictions of the original Oklahoma domestic corporation. There is in that law only one other provision recognizing the right of a foreign corporation to transact business in the Territory of Oklahoma, which is contained in what is now printed as Section 1369 of Snyder's Compiled Laws, to the effect that foreign corporations when they intersect the boundary line of the territory might extend into the territory, or build branches, but before they should do so, a certain designation of the route should be filed with the Secretary of State, and then it is provided

> "Thereupon such corporation shall have all the rights and privileges to make such extension or build such branches and receive such aid thereto as it would have had had it been authorized so to do by articles of association duly filed in accordance with the provisions of this Act."

The "articles of association filed in accordance with the provisions of this act" refer to articles of association framed and filed for the purpose of creating a domestic railway corporation in Oklahoma. Thus, both the consoli-

dation statute and the statute authorizing foreign lines to build branches, only guaranteed the same rights as to those domestic companies.

It must be borne in mind that the limitations on the rights of a domestic company were those of Section 1255, supra, that every grant was subject to alteration, suspension or repeal in the discretion of the legislature, not of the courts.

Thus it appears that under the laws of 1890, the only invitation to a foreign railroad corporation was to form a consolidation with domestic corporations in this state, or where it reached the boundary of the territory to build branches in the state. In either of which cases the only rights granted the complainant by the laws of the territory of Oklahoma was whatever rights, and no more, were given to a domestic corporation, and all of these were in the discretion of the legislature to take away.

But the complainant below does not claim that its rights were because of the territorial laws as to foreign corporations that reached the limits of the territory being allowed to extend or build branches. Its claim is that it has in some way secured the property and franchise of corporations in the state of Oklahoma, many of which were domestic corporations. For instance, the line from Sapulpa to Oklahoma City, the line from Tulsa to Enid,

the line from Blackwell, through Enid to the southwest, the line to Oklahoma City from Lawton, upon which an accident occurred which was the basis of the action in which the claim of foreign domicile was made, which led to the order of revocation, which is at the bottom of this case—all of these, and many other of the corporations which this appellee claims to own and operate, were domestic corporations in Oklahoma Territory, and the question is, how were the same secured by the appellee, and what is the result of the acquisition?

Acquisition of Oklahoma Lines Only Possible by Creation of Domestic Consolidated Company.

It is the contention of the state that the only law under which the complainant below could have secured the property of the Oklahoma City & Western Railroad upon which the cause of action arose which was tried in the District Court of Comanche County, wherein the case for forfeiture arose, that the only law under which this property could have been secured was that for the consolidation, and that the outcome of the consolidation was to make a domestic corporation in the State of Oklahoma, and that therefore the complainant below was either a domestic corporation in the State of Oklahoma, or else was a trespasser in the state.

While the path along which this result is reached is rather long and tedious, it will be necessary to travel it in order to get a full conception of the situation of the law in the Territory of Oklahoma previous to statehood.

On page 11 of the printed record, the company alleged that on the 18th day of July, 1907, while the Oklahoma City & Western Railroad Company was in the full use, enjoyment, ownership and operation of a certain railroad described, that it by a good and sufficient deed transferred to the plaintiff below, as in the other cases, the said railroad, together with all the franchises, rights, and privileges there or thereafter enjoyed by said grantor. In short, the complaint alleges that the complainant secured the railroad, together with its franchises and rights, and did this on the 29th day of March, 1899, as to the part from Sapulpa to Oklahoma City, and on the 18th day of July, 1907, as to the portion from Oklahoma City to Lawton and beyond. The petition does not allege how the acquisition of the property of the St. Louis & Oklahoma City, that is the part from Sapulpa to Oklahoma City was conveyed, but it is alleged that the property of the Oklahoma City & Western, that is the part from Oklahoma City to Lawton and beyond was by virtue of an act of Oklahoma of February 20, 1901.

As we have pointed out, in 1890 the Legislature provided for the method of consolidation of domestic railroads with other railroads, and for the method by which foreign corporations might build branches in the State.

It will be necessary to quote these here in full. They are Sections 1358 and 1369 of Snyder's Compiled Laws of Oklahoma, 1909, and read as follows:

> "Section 1358. Any railroad corporation may consolidate its stock, franchises, and property with any other railroad corporation, whether within or without the State, when their respective railroads can be lawfully connected and operated together to constitute one continuous main line, with or without branches, upon such terms as may be agreed upon, and become one corporation, by any name selected, which, within this State, shall possess all the powers, franchises, and immunities, including the right of further consolidation with other corporations under this section, and be subject to all the liabilities and restrictions of this article; and such in addition as such corporations peculiarly possess, or were subject to, at the time of consolidation by the laws then in force,applicable to them or either of them. Articles stating the terms of consolidation shall be approved by each corporation by a vote of the stockholders owning a majority of the stock in person, or by proxy, at a regular annual meeting thereof, or a special meeting called for that purpose, in the manner prescribed in section 1347, or by the consent in writing of such stockholders annexed to such articles; and a copy thereof, with a copy of the records of such approval or such consent, and accompanied

by lists of their stockholders and the number of shares held by each, duly certified by the respective presidents and secretaries, with the respective corporate seals of such corporation affixed, shall be filed for record in the office of the Secretary of State before any such consolidation shall have any validity or effect. Any railroad corporation whose line is wholly or in part within this state, whether chartered by or organized under the laws of this state, or of any other state or territory, or of the United States, may lease or purchase and operate the whole or any part of the railroad of any other railroad corporation, together with the franchises, powers, immunities and all other property or appurtenances appertaining thereto when such railroads can be lawfully connected and operated together, so as to constitute a continuous main or branch line. And all such purchases or leases heretofore made or entered into, are for all intents and purposes hereby ratified and confirmed: PROVIDED, That in no case shall the capital stock of the Company formed by such consolidation exceed the sum of the capital stock of the companies so consolidated at the par value thereof, nor shall any bonds or other evidences of debt be issued as a consideration for or in connection with such consolidation."

"Section 1369. Any railroad corporation chartered by or organized under the laws of the United States, or any state or territory, whose constructed railroad shall reach or intersect the boundary line of this state at any point, may extend its railroad into the state from any such point or points to any place or places within the state, and may build branches from any point on such extension. Before making such extension or building any such branch road, such corporation shall, by resolution of its directors, to be entered in the record of its

proceedings, designate the route of such proposed extension or branch in the manner provided in section 1341, and file a copy of such record, certified by the president and secretary, in the office of the Secretary of State, and cause the same to be recorded as provided in said section 1341. Thereupon such corporation shall have all the rights and privileges to make such extension or build such branch and receive such aid thereto as it would have had had it been authorized so to do by articles of association filed in accordance with the provisions of this Act."

It will be sufficient to note that Section 1369, supra, does not provide that a foreign corporation may consolidate or secure any Oklahoma property. It only provides that it might extend its railroad and build branches. The power to extend and to build is altogether separate from the power to secure franchise granted to others. The only method by which a foreign corporation might secure the franchise granted to other corporations is under Section 1358.

Section 1358 was Section 1041 of the laws of 1890, and Section 1016 of the laws of 1893, which provided four things:

(1) That the railroad corporations ,that is the kind of railroad already provided for by the laws of this state, which was only a domestic corporation, might consolidate its property and franchises.

(2) Then it provided the conditions under which it might do this, which were when two respective railroads to be consolidated could be lawfully connected, and therefore that the two to be consolidated were not competing lines and when a consolidation thereof would not work a restraint in trade. In other words, a direct denial of the right to do that which the answer claimed was done by this corporation.

(3) They can be consolidated when the two can be operated together to constitute one continuous main line.

(4) That they can be consolidated upon such terms as may be agreed upon by their stockholders.

Then follows a statement of the consequences of consolidation. The statute says that they become one corporation, manifestly an Oklahoma corporation, to be designated by any name which they may select, and that such consolidated Oklahoma corporation shall, within Oklahoma Territory, possess all the powers, franchises and immunities and be subject to all the liabilities and restrictions of the Oklahoma law, and in addition they should have the power and liabilities such as the corporations possessed which were consolidated, and were subject to at the time of the consolidation. It then provided that articles, stating the terms of the consolidation should be filed.

It is then provided as a part of the terms of consolidation, that a railroad company whose line is wholly or in part within the territory, whether chartered here or elsewhere, might lease or purchase, or operate the whole or any part of any other railroad corporation, when the two could lawfully be connected and operated together, and all such purchases or leases theretofore made—that is made before 1890—were ratified, providing that in no case should the capital stock of the company formed by said consolidation exceed the sum of the capital stock of the companies consolidated.

Afterward by act of February 24th, 1899, it was provided that "any railroad, whether organized under the laws of this territory or any other state or territory, or of the United States, owning any railroad in this territory might sell or lease the whole or any part of its railroad and franchises constructed or to be constructed, or any interest therein, together with all the property, rights, privileges and franchises thereto appertaining, to any other railroad company organized or existing under the laws of this territory or of any other state or territory, or of the United States: Provided, that no such sale or lease shall be entered into unless the line of railway so sold or leased shall when constructed form a continuous line of railroad."

And then it was provided that any railroad which "so purchases or leases a railroad or railroads in this territory shall posses and enjoy within this territory all the rights, powers, privileges and franchises conferred by the laws of the territory upon a railroad corporation formed thereunder."

In other words, the act of February 24th, 1899, did not guarantee any further right than did the act of 1890, that is, it only guaranteed to the consolidated or purchasing company the rights of an Oklahoma company. By Act of February 20th, 1901, appearing on pages 86 and 87 of the Session Laws of that year, this act of February 24th, 1899, was amended by providing the following words at the beginning of the section:

> "Any railroad company, whether organized under the laws of this Territory or any other state or territory, or of the United States, owning any railroad in this territory,"

The laws of 1890 provided "may sell or lease the whole or any part," etc., but instead of these words in 1901, it was provided that the railroad named

> "and any railroad company organized under the laws of this territory, owning a line of railroad either within or without this territory, may sell or lease the whole," etc.

Thus the Act of February 24th, 1899, with the amendment of February 20th, 1901, does not change the Act of 1890, (Section 1041) nor in any way modify it, but simply adds to it.

Thus, it will be found that Section 1358 of Snyder's Compiled Laws, being the act of 1890, providing that a railroad company in this state might consolidate with a railroad company whether within or out of this state, and might do so by sale, lease or purchase, but only by a consolidation into an Oklahoma domestic corporation, provided by that section, and that Section only gave authority to the Oklahoma company to consolidate with the other company which was not an Oklahoma company. It gave no authority to the other company to consolidate with the Oklahoma company.

This gap in the law is exactly that which is furnished by the law of 1899 with the amendment of 1901. It only provides that a railroad company, whether of this territory or a foreign territory, which owns a railroad in this territory, or owns a railroad outside of the territory, might sell or lease the whole or any part of its railroad. The law of 1890 provided that the Oklahoma company might purchase or lease the two lines together. This gave the right to one to purchase, to the other to sell to it, or lease. The word "Lease" being used applies as well to the

act of the lessor as to the act of the lessee so that the two acts are supplemental one to the other, and are to be construed together, so that the combination thus made shall be an Oklahoma corporation.

Section 1041 of the laws of 1890, was, as stated, adopted from Dakota, Dakota Territory had adopted that law from California. It was passed upon in the latter state in the case of California Southern R. R. Co. v. Southern Pacific R. R. Co., 67 Cal. 57, 7 Pac. 123, and in that case it was held that these articles of consolidation amounted to new articles of incorporation of a California company.

The same question was passed upon in the case of California Co. v. Hooper, et al, 76 Cal. 404, 18 Pac. 599, to the effect that the articles of consolidation amounted to articles of incorporation, necessarily creating a domestic corporation in California.

In the case of Smith v. Los Angeles, 98 Cal. 216, the same law is discussed, and it is said that the new corporation is an entity.

Practically the same law is again discussed in Market St. Railway Co. v. Helmer, 109 Cal. 517, 42 Pac. 225, and it is said in that case that the consolidated corporation becomes a new and distinct corporation.

The California Code, because of amendments from time to time, has not at all times been exactly the wording of the Oklahoma provision, but it is essentially the same, as the Oklahoma Law. It is our contention, therefore, that the effect of the Oklahoma laws must be to consider them because they all bear upon one subject, to be but one statute, and therefore to conclude that upon the purchase of the Oklahoma City & Western corporation by the St. Louis & San Francisco Railroad Company, as well as by the purchase of the St. Louis & Oklahoma City Railway Company, as well as the other corporations named in the Bill, that a domestic corporation in the State of Oklahoma, was constituted.

As bearing upon similar situations, see:

Meyer v. Johnson, 64 Ala. 65.

Furthermore the purchase of the entire stock of one corporation by another is in equity a consolidation.

Williamson v. N. J. Southern Railroad Co., 26 N. J. Eq. 401.

And the complainant will not be heard to say that it did not file the articles of consolidation with the Secretary of State. Such a provision held to be directory in

Leavenworth v. Chicago, etc., R. Co., 134 U. S. 688.

We take it that the situation is similar to that decided by this court in

Yazoo R. R. Co. v. Adams, 180, U. S. 1;

Pullman Palace Car Co. v. Missouri Pacific R. Co., 115 U. S. 587;

Keokuk Co. v. Missouri, 152 U. S. 301.

Even though the name of one of the old companies continue to be the name of the consolidated company, the new company would yet be a domestic company.

Railroad Co. v. Georgia, 98 U. S. 359.

Even if all the legal requirements were not followed by the company, that would be a matter for the State of Oklahoma, alone, to question.

Pacific Railroad Removal Cases, 115 U. S. 15.

The matter was well expressed by Judge Taft in Farmers Loan Co. v. Toledo R. Co., 67 Fed. 49:

> "It is too well established to need discussion that both sides a *de facto* corporation and the persons exercising the rights of stockholders in such a corporation are estopped to assert its unauthorized existence as a corporation to avoid a debt incurred by it in the actual exercise of corporate franchises and the doing of corporate business."

Lines Operated in Oklahoma an Oklahoma Company.

It therefore is immaterial whether the St. Louis & San Francisco Railroad Company completed or failed to complete its plans to consolidate its property in Oklahoma with an Oklahoma corporation or not. The only way by which it could acquire the franchises of the Oklahoma corporations would be by consolidation. It did, acquire them, and the result, therefore, must be that the consolidated company is an Oklahoma corporation.

An interstate consolidated corporation being a citizen of each of the states of its constituent companies, cannot, when sued in one of those states, claim the right of removal to the federal courts upon the ground that it is a citizen of another state.

Nashu, etc., R. Corp. v. Boston, etc., R. Co., 136 U. S. 382;

Pennsylvania R. Co. v. St. Louis, etc., R. Co., 118 U. S. 290;

Muller v. Dows, 94 U. S. 444;

Railway Co. v. Whitton, 13 Wall. 270.

We urge that this court in Memphis, etc., vs. Alabama, 107 U. S. 581, and in Clark vs. Barnard, 108 U. S. 486, laid down the correct rule that it is altogether a question of what was intended; that if the intention of

the law is to create a domestic corporation that such an effect follows. We think that the situation as summed up in Louisville Co. vs. Louisville Trust Co., 174 U. S. 552, at pages 562-3, where the previous case was discussed, that the mere grant of privileges does not create a domestic corporation, but if the language used implies the creation of a new corporation as the condition of the consolidation, that in such case allegiance is due by the new corporation to the state creating it, and that thus it becomes a question of construction of statutes.

In view of the fact that the Oklahoma statute was taken from California, that it has not been construed in Oklahoma or Dakota but was construed in California, to mean the creation of a new domestic corporation of California, it would seem to follow that that rule is binding upon the Federal courts and that it must be held that the corporation operating a road from Oklahoma City through Lawton, which was the defendant in the district court of Comanche county, was an Oklahoma corporation, and that when that corporation claimed a domicile elsewhere than in that state, that the state had the undoubted authority to forfeit its intrastate right to do business in Oklahoma.

Not only upon the precedent of the said construction of this law by the state court of California but by the settled

law of this court, both the corporation which purchases, and the corporation which sells, must be authorized to do so by the law of the state in which the transaction occurs, and such authority will not be inferred from general statements.

Thomas vs. Railroad Co., 101 U. S. 1.

Oregon Ry. Co. vs. Oregonia Ry. Co., 130 U. S. 1.

As both the power in Oklahoma of the foreign company to buy and the Oklahoma company to sell must be established under the Oklahoma statutes, these statutes of 1890, of 1899, and of 1901, must be construed together, or else the power does not exist, because the statute of 1890 only gave to the Oklahoma company the power to lease or purchase and operate, but not the power to sell. The statute of 1899 and 1901 gave the power to sell which was missing from the statute of 1890.

The Eleventh Question.

INCAPACITY OF COMPLAINANT TO BUY AND ITS ASSIGNORS TO SELL.

This question, a matter of law, arose on demurrer though more definitely pleaded in the answer. It arose in reference to the claim of federal right to operate intrastate.

We will now discuss the rights under the Federal laws. In this connection we make two claims. First, that the Federal grants gave no power to the original grantee to sell or alienate its franchises, and gave no power to the Missouri corporation to purchase the franchise, and also that whatever grant was given by the Federal act was like the grant given by the Oklahoma act subject to the power of Congress to modify, amend or repeal. The effect of this reverse power we wish to discuss under a subsequent head.

We will now examine each of the Federal acts and point out that it does not specifically give its franchisee power to sell or alienate, and also that it does specifically provide reserve power in Congress to modify.

It will be found that the grant given to the Federal franchisee is exactly that grant passed upon by this court in Thomas vs. Railroad Co., 101 U. S. 1, and Oregon Ry. Co. v. Oregonian Ry. Co., 130 U. S. 1, which, though naming a grant to the companies and "assigns," was construed to mean only such assigns as shall be authorized by law to take, and because no assignee has ever been authorized by law to take the franchise, therefore, no alienation by law could have been made.

The point is made that there was no law in the Indian Territory for the purpose, none being enacted by Congress, and that no law in Oklahoma authorized the alienation of the franchises to these corporations, and no law of Congress authorized that alienation. It is claimed that because of the mention of the word "assigns" in the grant, that such power was intended. For instance, in the Paris branch the words occur, "that the St. Louis & San Francisco Railway Company," one of the antecedents of the present complainant, "shall accept this right of way upon express conditions upon itself, its successors, and assigns," etc. A like provision is to be found in the Sherman and Oklahoma City branches and Enid and Anadarko act. There is also a provision "that no part of the land herein authorized to be taken shall be leased or sold by the company." In section 10 of the Enid and Anadarko act there is a provision that the right of way is accepted "upon express conditions binding upon itself, successors and assigns." And in section 12 there is a provision that "the right of way herein and hereby granted shall not be assigned or transferred in any form whatever, prior to the construction and completion of the road except after mortgages or other liens that may be given or secured to aid in the construction thereof.' In section 13 it is stated,

> "That the right to locate . . . . together with the right to take and condemn land for right of way, whether the same have or have not been conveyed to the allottee, with full power of alienation, is hereby granted to any railway company, organized under the laws of the United States . . ."

But this alienation clearly refers to the land, the allotment, not the grant. All of these statutes, in view of the decisions of this court, simply means that what is definitely granted is given, and that the right to assign or alienate is to be subject to future legislative act.

Upon a grant exactly similar to this here in question, a decision was had in the case of Frisco vs. Southern Kans. Ry. Co., 40 Fed. 273, in which it was held that the Southern Kansas Railway, the grantee by that act, was without authority to alienate its franchise to the Atchison, Topeka & Santa Fe Railway Co.

In addition to the cases named are

> Central Trans. Co. vs. Pullman Palace Car Co., 129 U. S. 24.
>
> L. & N. vs. Kentucky, 161 U. S. 677.
>
> De LaVergne Refrigerating Machine Co. vs. German Savings Institution, 175 U. S. 40.

Where general authority to a company to purchase, lease, maintain or hold is given it is held that that only

confers authority to purchase, lease or maintain said railroad companies as have legislative permission to sell and convey to such authorized company.

State vs. Consolidated Coal Co., 46 Md. 1.

From all of which it must sufficently appear that the Missouri corporation which sued below had never been a party to any contract with any of the governments, either the state, the territory or the United States, and therefore, had no contracts the obligation of which could be violated. As far as the constituent companies are concerned they are not parties to this proceeding, but if the allegations made by the complainant are true, because of unwarranted alienation of their franchises they would be subject to ouster and forfeiture.

Reserve Power in the Territorial Legislature, in the State Legislature, and in the United States Congress to Modify the Grants Made.

It next remains to discuss what is the nature of the power reserved to the various governments.

We contend that so far as the grants made by the United States gave power to do an intrastate business within the confines of the territories, that the United States merely acted in anticipation of the power of the

state, and, therefore, as to its grants the state might modify any of them, which if it had granted itself would be subject to its own revocation.

This court in Pollard's Lessee vs. Hagan, 3 How. 212, said that the only right of the United States in the domain of the Louisiana purchase was to hold the country for the future erection of states.

In Meyer vs. Manhattan Bank, 20 Ohio 283, it was said that a charter to a bank to do the public business of banking was not a vested right that could not be taken away because granted in a district part of which was then a territory and afterwards became a state, where the existence of the claim to rights, after statehood, would be in violation of the public policy of the state.

Therefore all grants made by the United States previous to statehood are not to be considered as on a different basis than if they had been made by the state itself. That is, the power reserved to Congress to modify must be considered as passing to the state, and that the state will now have the same power to modify that Congress reserved in anticipation of the state's existence.

It is to be noted that the reservation made in the territorial grant was to be governed by the discretion of the legislature. As far as the state grant is concerned it is provided by section 47 of article IX of the constitution

that the legislature of the state shall have power to alter, amend, revoke or repeal any charter now existing and subject to be altered, amended, annulled, revoked or repealed at the time of the adoption of the constitution, or any that may be thereafter created when in its opinion it may be injurious to the citizens of this state, in such manner, however, that no injustice shall be done to the incorporators. Therefore, as we view it, whether it is a question of territorial legislature under the reservation made by the territorial law, whether it is a discretion of Congress under the reservation made by Congress for the states, or whether it be a question of the reserve power in th state to act upon all franchises existing at statehood or thereafter created, that the effect in each instance is the same; that the legislature may change, annul or revoke a franchise, whenever in its opinion—that is, the opinion of the legislature—the franchise may be injurious to the citizens of the state, and with the limitation that it shall be revoked or repealed in such manner that no injustice shall be done to the incorporators, is a direction given the legislature and not a judicial power to be measured by the courts.

That this matter was entirely misconceived by the learned trial judge very clearly appears. The passage of the act itself, which, as we have shown, is not an unusual exercise of police power, was a sufficent declaration by

the legislature that it regarded as injurious to the citizens of the state the right to claim a foreign domicile in the case of all corporations which it had domiciled in the state, and that if any right existed to any corporation by reason of Federal grants, or territorial grants, that in the opinion of the legislature that power could not be exercised to the extent of repudiating the creative power of the state.

The point is sufficiently established in this court that the legislature is the judge of when a right should be amended, and not the courts, and that it is for the legislature to pass upon the question of whether the amendment works injustice upon the incorporators.

Hammond Packing Co. vs. Arkansas, 212 U. S. 322.

Noble State Bank vs. Haskell, 219 U. S. 104, 575.

Calder vs. Michigan, 218 U. S. 591.

Furthermore, it is impossible to hold that the theory of bringing an action in the Federal court, or removing the case to the Federal court was one which belonged to the corporation in the territory of Oklahoma or the Indian Territory under a grant either from the United States or from the Territory of Oklahoma, and was a contract made with it passing through those governments

for the state, because at that time no such right or opportunity for it existed.

There was but one court, the Territorial court, in Oklahoma Territory. The court in the Indian Territory was termed a United States court, but was in fact a territorial court simply. In those courts then no right of removal, no right of a choice of form existed in those territories. During territorial days exactly the condition existed which is the outcome that complainant says is aimed at by this statute. There was but one court, which was a territorial court, and if the effect of the statute would be to take away the right to resort to any court, then the effect of the statute would be to put the complainant in regard to this matter in exactly the condition that it was in during territorial days. If the right to resort to the Federal court as distinguished from the territorial court belonged at any time to the complainant, it was a right that could not have existed until statehood. It was a right that first came into existence then, and for this reason it could not have been a right or contract made with it by the United States, or by the Territory of Oklahoma, because the power of each to deal with any matter affecting the intrastate business of the state ceased and terminated at the very moment that this right first arose—that is, at statehood.

Complainant's Operation Unlawful Because of Combination in Restraint of Trade.

The admitted facts which as a matter of geography the court must judicially know from the bill or else was fully informed of in the answer to the effect of combination of parallel and competing lines in restraint of trade constitute a fatal defect in the claim for equitable relief. This defect inhered in the very existence of complainant's claim to operate. Standing only by reason of a continued breach of law, he seeks equitable relief as to things which he only possesses by a continued crime.

On demurrer the trial court mentioned two reasons for setting aside this hindrance to an injunction, i. e. (1) that there were no direct allegations of illegal intent in the stockholders, and (2), that this objection could only be made by the state itself. The first reason was answered by the direct positive allegations of the answer furnishing the material said to be missing from the bill, yet this portion of the answer was stricken out on exception. From this it appears that this defense was held insufficient because it was not asserted that the state for this reason had forfeited the complainant's rights. Yet as a forfeiture was the very thing which complainant itself says this defendant had perpetrated as an officer of the state under its laws, surely this will be a case too weak for injunction

if it be confessed that the only complaint is as to the reason for the forfeiture. What of injury would be complainants' if in equity meriting a forfeiture is simply sought an injunction against the wrong agent administering the dose.

While the act of defendant in the forfeiting is not the act of the state if unauthorized, yet if authorized it was the state's act and the state in some senses is recognized as a party to the suit by this court.

In the recent case of *ex parte* Oklahoma, 220 U. S. 191, the State of Oklahoma sought to show that in the circuit court its agents were enjoined from the prosecution of a pending case under a valid law, and this court said that the state court could not seek to restrain the circuit court by prohibition in this court, because the parties to the cause below, the state's agents, might have brought the questions here by appeal or *certiorari*. Identity of parties, in the proceeding for prohibition in this court—the state, and in the injunction proceeding in the circuit courts—the state's agents, was sufficient to afford the state an adequate remedy in the opportunities for defense offered its agents. From this it must inevitably be deduced that where state agents are sought to be enjoined from the performance of their agency, such parties must be allowed to plead every defense the state might plead.

In other words, the defendant is the state for the purpose of pleading a valid, not an invalid defense, and thus can in this case plead the want of injury in a forfeiture where the state might forfeit the same rights for other reasons.

Complainant's Operation Not Injured, Because Rights Prior to Statehood Ran Along With the Law Limiting Charges.

The defense that the railroad's rights prior to statehood ran along with a continuing condition not to charge beyond a stated limit, and that because this continuing condition was continuously broken, no rights at statehood occurred, was stricken out, it is presumed, for the same misconception as the allegations as to the restraint of trade.

These were the grounds of forfeiture which only were suspended by statehood.

They were then suspended, but in the same instant and for the same cause as the grants they conditioned.

Oklahoma vs. A. T. & S. F., 220 U. S. 277.

Oklahoma *ex rel* vs. C. R. I. & P., 220 U. S. 302.

State vs. C. R. I. & P., 21 Okla. 334.

The defense was sufficient to deny deprivation of property.

D. *Sixth and Tenth Questions.* IS THE FORFEITURE AN ACT OF THE SECRETARY OR THE JUDGE; IF THE FORMER, DOES HE EXERCISE JUDICIAL OR ADMINISTRATIVE POWER; IF THE LATTER, IS THE INJUNCTION IN VIOLATION OF SECION 720, REVISED STATUTES OF THE UNITED STATES?

It is next necessary to discuss whether the act of Oklahoma requiring the Secretary of State to enter an order revoking the charter of a corporation when there was placed before him a certificate of the district judge in whose court the declaration of repudiation of the State's allegiance was made, amounts to an exercise of arbitrary power, or legislative power, or judicial power, such as an executive officer of the state could not exercise, or power given by the statute either under the Constitution of the United States or the Constitution of the State.

It would appear that the recent decisions of this Court in the cases of United States vs. Grimaud, 220 U. S. 50 and Light vs United States, 220 U. S. 523, together with the authorities named there are a sufficient answer to this contention.

Where the legislature prescribes the exact conditions under which certain results are obtained, it may leave to administrative or executive officers to determine the existence of the particular facts which will be followed by the result.

In this case nothing is left to the whim of the Secretary of State. The district judge, a judicial officer, passes upon the question of whether the declaration made in a particular case is a declaration in the character expressed in the statute. If he finds that it is of that character, he has a copy of the same made, and causes it to be certified to the Secretary of State. When the Secretary of State receives the certified copy from the district judge, it thereupon becomes his duty to forthwith enter an order declaring the license or charter forfeited and revoked. No opportunity for the exercise even of discretion is left to the Secretary of State. It is merely a ministerial function, and as such is not the taking of property without due process of law. The due process of law consists in the act of the judicial branch of the government, the district judge, in determining that the declaration filed in his court is of the character named in the statute. The statutes does not prevent the litigation of that question before that district judge. Section 3 provides that it shall be the duty of the judge of any court in which any

declaration or claim of domicile within another state or foreign county is filed, to report, etc., and to furnish. It is therefore necessary for the judge to find what has been done, and the company can before him contest the finding.

In this case the company does not set out a copy of the certificate or finding of the acts of the district judge. All that is set out appears on page 33 of the printed record, wherein the Secretary of State finds that he has received due, proper and legal notice from the Judge of the District Court that certain facts have existed, and it is not contended by the complainant below that the statement of the Secretary is insufficient upon which to base his action. He says on page 33 that when he filed his petition for removal that thereupon the presiding judge of the said district court certified to the Secretary of State the fact that such petition and bond had been filed in his court. Certainly this amounts to a statement of the finding on the part of the district judge that the act in controversy had been violated, and therefore so far at least as the facts in this case are concerned, there is not a suggestion that the Secretary has acted judicially or in a legislative capacity. He has simply been the ministerial mouth-piece by which the forfeiture decree of the legislature was to operate.

In discussing the distinction between judicial, legislative and administrative power in Prentis vs. Atlantic Coast Line, 211 U. S. 210, at 226-7 involving the applicability of Section 720, Revised Statutes of the United States, Compiled Statutes, 1901, p. 581, Mr. Justice Holmes said:

> "A judicial inquiry investigates, declares, and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That question depends not upon the character of the body, but upon the character of the proceedings. . . . The nature of the final act determines the nature of the previous inquiry."

Under this proceedings before the judge are judicial and the proceedings in this case below sought to enjoin the enforcement of the judge's finding, and, thus contravene the federal statute.

E. *The Fifth Question.* THE STATUTE NOT AN INTERFERENCE WITH INTERSTATE COMMERCE.

It is next claimed that this statute is an interference with interstate commerce.

That question seems to be covered and concluded against the company by the case of Waters Pierce Oil Co., vs. Texas, 177 U. S. 45 and Louisville & Nashville R. Co. vs. Kentucky 183 U. S. 512 at 518.

It is to be inferred from the language used in Pullman Co. vs. Kansas, supra, that a statute which would put a discriminatory burden upon a foreign corporation as compared to a domestic corporation of the same kind, which foreign corporation was engaged in interstate commerce, and provided that the discrimnation actually worked an interference with interstate commerce, that in such case the interference complained of might arise, but we have shown that no property right or contract was violated in this case, as was found in Western Union Company case. No discrimination was worked upon this company as upon the Pullman Company in the Kansas case; the Western Union Company in the Arkansas case; and the Southern Railroad Company in the Alabama case; nor the Rock Island in the Missouri case; the statute neither working a discrimination or taking away vested rights.

The interference with interstate commerce was by four members of this court in the Pullman and Western Union cases in Kansas rested upon the fact that capital used in interstate commerce was taxed, and in the other cases because a discrimination against a company operating in interstate commerce was necessarily effected.

It would therefore appear that every distinction between the Waters Pierce case in Texas and the Louisville

and Nashville case in Kentucky is put aside. This case is upon all fours with those.

There being neither discrimination, deprivation of property nor direct interference with interstate commerce, and the denials of the answer forever excluding a finding that the forfeiture of rights of operation internal to the State of Oklahoma actually interfered with the right to do interstate business by rendering that right so difficult as to become prohibitive—all the grounds asserted and found in the prior cases are absent in this case. The conclusion that there is no interference with such interstate commerce must follow.

It will be worth while to examine the allegations of the bill and answer narrowly. (Bill pp....., Printed Record.)

The reasons given are (Printed Record, p. 35):

Oklahoma lines are connected with those in other states and are needed to carry business between these states.

It is asserted that the enforcement of the forfeiture would necessarily directly interfere with interstate business by imposing an intolerable and prohibitive burden on such comerce.

How this would be, is not stated. The forfeiture would interfere only in the same manner as any other pecuniary burden. Taxes operate in the same direction, yet interstate commrece may be taxed if the tax is upon the property so used not upon such use of the property. Any large debt, whether to the state or other person, would act in the same direction, yet it must be paid. Let us suppose the case of a foreign company doing an interstate business but never having been authorized to transport intrastate. If it made a showing that its interstate earnings were prohibitive on further operation, but that all its earnings, if allowed to do intrastate commerce, would be sufficient to justify continuance—in such case, if the state refused the largess of its grant to do intrastate business, this gift which stood between profit and loss—would such a refusal be an interference with interstate commerce?

Interstate and intrastate commerce, each must stand or fall by itself or Smyth v. Ames be overruled, and the principle be established that Congress by authorizing interstate thereby also authorizes intrastate operations if needful to declare a dividend.

But the power of the state over strictly internal trade is as plenary as that of the nation over interstate commerce. Either the system of checks and balances of

the American Experiment must be totally destroyed or else the incidental, indirect consequences of proper state action be put beyond consideration here.

Upon the bill, lacking as it does any statement of facts how as a matter of law the forfeiture of intrastate rights may interfere with interstate rights, this ground should be denied.

But more strongly does that conclusion arise out of the answer, Paragraph 10 (p. 63, Printed Record), denying that said act is an interference with interstate commerce. It cannot be rightfully objected to this answer that it states no facts. It could not state facts in denial of such statements as are contained in the bill. The bill having alleged no facts of interference. There were no such facts to be denied. The denial is certainly sufficient as against such a bill.

(*a.*) *PENALTIES.*

Finally, it is claimed that by reason of the fines provided by the statute that the law itself is unconstitutional but it has been decided by this court that the penalties may be disregarded as not affecting the validity of the rest of the law.

> Reagan v. Farmers Loan & Trust Co., 154 U. S. 362.

The decision in *ex parte* Young, 209 U. S. 223, was based upon a different proposition. There it was pleaded and found by the court that the penalties were imposed for the express purpose of preventing an application being made to the court. Nothing of that kind is alleged or proved in this case. All that is claimed is that the fines are excessive. Certainly that was for the legislature to fix. This action does not seek to set aside an excessive fine.

CONCLUSION.

These were the sole points submitted to the court for its decision upon demurrer. Every other matter discussed by the trial judge, however interesting, is immaterial to this case, and as none of these grounds are good, the demurrer should have been sustained, the exceptions should have been overruled, the injunction should have been refused.

The complaint did not contain the ground which remains open under the decisions of this court of whether an act, that without discrimination, without violation of contract, without taking away the right of a foreign corporation to claim a domicile in the state of its birth, provides simply the alternative to the corporation of making the claim and losing the right to do intrastate business ,or waiving the claim and continuing the right to do intrastate business, whether or not such a statute is good, is not involved in this case; it was not presented by the pleadings. The pleadings simply presented the grounds named. It stated them definitely, certainly and

with great skill. (Pages 34, 35 and 36, Printed Record.) The only matter that was before the court was what was stated in the pleadings, and the observations made as to the supposed case that might have been presented are immaterial, and were not for the court to decide. The complainant below has formed the case to suit himself. The law upon its face showed that there is no discrimination, that there is no breach of contract, that the right to resort to the federal court has not been taken away. These, together, with the right of the Secretary to act the effect of the penalties were the only questions presented by complainant, and therefore in this case it ought not to be determined, it is not in the power of the court to determine, according to the precedents, and according to the settled law, what would be the consequence if a cause should be presented in which the claim would be made and the questions would arise whether a state, without interfering with interstate commerce, without interfering with any contract, without creating discrimination, without interferring with the complainant's right to resort to the federal court, might hang in the balance as against the right to do intrastate business the condition of perfect equality with domestic corporations. We consistently urge that the point should not be decided in this case. But if it is to be decided, it would appear from the authorities

that where no question of contract, discrimination against interstate commerce, or interference with resort to the federal court exists—that where the state has completely separated its action from any of those matters, that its right to deal with intrastate commerce wihin the domain thereof being plenary, it has no right to say that those corporations who will exercise corporate power in it, must do so upon an absolute parity with its own corporations.

The suit should be remanded with instructions to dismiss the action.

Respectfully submitted,

BEN F. HARRISON,
Secretary of the State of Oklahoma.

CHAS. WEST,
Attorney General of the State of Oklahoma.

[redacted]

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III.

Appellee having the right to remove the case from the State Court of Oklahoma to the United

States Court in that State, cannot be lawfully excluded from that State for exercising that Constitutional right, because—

(*a*) It has a contract with the United States, permitting it to remain in the State of Oklahoma for the purpose of operating its railroad.

(*b*) It had a contract with the Territory of Oklahoma, which is protected by the Constitution of the United States and by the provision of the Constitution of the State of Oklahoma, preserving all rights previously existing.

(*c*) To exclude appellee from the State would be to impair the obligation of those contracts, in violation of Federal and State Constitution guaranties.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

BEN F. HARRISON, Secretary of State of the State of Oklahoma,
Appellant,

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY,
Appellee.

No. 623.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA.

BRIEF FOR APPELLEE.

STATEMENT OF THE CASE.

Appellant demurred to the amended complaint (Printed Rec., p. 38). The demurrer was overruled (Printed Rec., p. 54). Answer of appellant was filed (Printed Rec., p. 54). Appellee filed exceptions to the

answer (Printed Rec., p. 70). The exceptions were sustained (Printed Rec., p. 72). Final decree in favor of appellee was entered (Printed Rec., p. 72).

The substance of the allegations contained in the amended bill is concisely stated in the opinion of the trial court found on pages 39 to 43, inclusive, of the printed record. The appellee adopts that statement, eliminating, however, the Act of the State of Oklahoma, the legality and effect of which are questioned by appellee, as that Act is fully and correctly contained at pages 1 to 3, inclusive, of appellant's brief.

The statement follows:

That the complainant is a corporation organized and existing under the laws of the State of Missouri and a citizen of that state, and that the defendants are citizens of the Western District of the State of Oklahoma; that the matters in dispute exceed $5,000, exclusive of interest and costs, and that the cause arises under the Constitution and Laws of the United States; that the complainant has for several years owned and operated and now owns and operates a system of railroad as a common carrier of freight, passengers and mail between, in and through the States of Missouri, Kansas, Oklahoma, Arkansas, Tennessee, Mississippi and Alabama; that the portion of said railway system in Oklahoma is composed of sixteen lines of railway, of the aggregate length of fifteen hundred miles, which were constructed between certain named termini by other

railroad companies, under and by the authority of and in compliance with certain designated Acts of Congress and the Statutes of Oklahoma Territory (some of the lines being located in both Oklahoma and Indian Territories and others in each of them) and thereafter with all of their property, franchises, etc., acquired by the complainant by deeds of conveyances (two of them being made by purchasers at foreclosure sales, twelve by the original companies and two by intermediate grantees, in one instance a lease being made), all prior to the admission of the State, and at all times since so acquired forming a part of a continuous and connecting line of interstate railway, on which since completion and acquirement by complainant it has been carrying interstate and intrastate commerce and the mail; that by the laws of Congress and the Territory of Oklahoma and said conveyances, valid contracts were made whereby the complainant acquired the right to operate and maintain said railroads; that the laws of Congress and the Territory of Oklahoma invited the investment of capital in railroad enterprises, and that pursuant to the invitations, offers and conditions contained in such laws, the complainant has invested many millions of dollars in these railroads, its property being assessed for the current year at $47,266,311.00; and that by virtue of such laws and the investments thereunder, the complainant has acquired the right by contract to continue to own, maintain, operate, and enjoy such

railroads and possess and enjoy the rights of a common carrier of interstate and intrastate commerce as well as all the rights, privileges and franchises of corporations organized under the laws of the Territory of Oklahoma; that not being so required, complainant has not procured a license from the Territory or State of Oklahoma to transact business in the State, but has carried on its business as such common carrier in the State under the authority of the laws in force at the time of the organization of the State (on November 16, 1907), and the Constitution of the State, so far as applicable.

That in a civil action instituted against it in the District Court of Comanche County, in the State, for the recovery of damages sustained prior to the admission of the State, the complainant filed a petition with bond, for the removal of the action to the Circuit Court for this district and that the presiding Judge of the state court certified the fact to the Secretary of State, whereupon the defendant, Leo Meyer, Acting Secretary of State after this suit was begun in this court, signed an instrument, as follows:

"STATE OF OKLAHOMA.

Revocation of Charter of St. Louis & San Francisco Railroad Company in Oklahoma.

Guthrie, Oklahoma, August 29th, 1908.

Petition for Removal and to the Circuit Court of the United States.

Gertrude Goode, Administratrix of the Estate of Frank R. Goode, Deceased, Plaintiff,

vs.

St. Louis & San Francisco Railroad Company, a Corporation, Defendant.

State of Oklahoma, Comanche County.

In the District Court.

Having received due and legal notice from J. T. Johnson, Judge of the District Court of Comanche County, that the above named corporation defendant, St. Louis & San Francisco Railroad Company, has filed a petition for removal to the United States Court, a certified copy of which is on record in the office of the Secretary of State at the capital in the City of Guthrie, in the State of Oklahoma.

Therefore, I, Leo Meyer, Assistant Secretary of State, and now Acting Secretary of State of the State of Oklahoma, by authority invested in me

under section four of House Bill No. 131, approved by the Governor of the State of Oklahoma, C. N. Haskell, May 26th, 1908, do hereby declare the license of the said St. Louis & San Francisco Railroad Company to transact business in the State of Oklahoma forfeited and revoked.

In Testimony Whereof, I have set my hand and caused to be affixed the Great Seal of the State.

Done at the City of Guthrie, this twenty-ninth day of August, A. D. 1908.

LEO MEYER,

(SEAL) *Acting Secretary of State.*"

That the defendants have by said instrument attempted to declare the charter and authority of complainant to do business within the State of Oklahoma to be revoked and forfeited, and since the date of the instrument have been and are threatening and attempting to deprive it of the right to do business in the State under and by virtue of the legislative act of the State, approved May 26, 1908, and that the effect of that instrument, unless declared void and the proposed action of the defendants in attempting to enforce the provisions of the Act will be to subject complainant to numerous prosecutions and annoying litigation, and make possible the assessment by various courts of the State of fines ranging from $1,000.00 to $5,000.00 for each day or part thereof during which complainant transacts business in the State; that the complainant is without remedy at law, and that the

injury and damage to result from the enforcement of the Act are irreparable.

The complainant then asserts that the legislative act of the State is void for conflict with the Constitution of the United States on several specified grounds, and with the Constitution of the State, and prays a decree enjoining the defendants from forfeiting or revoking, or declaring forfeited or revoked, or attempting to forfeit or revoke its authority or charter to carry on its business as a common carrier in the State, declaring the legislative act void and ineffective as to complainant and the instrument signed and issued by the defendant Leo Meyer, Acting Secretary of State, null and void and inoperative as to the right of complainant to carry on such business in the State.

The specified grounds of unconstitutionality of the Act are contained in paragraph Twelve of the amended bill (Trans. of Rec., pp. 34-36, inclusive), and are referred to in part at pages 13 to 18, inclusive, of appellant's brief.

BRIEF OF THE ARGUMENT.

I.

Explanation of Appellee's Source of Title and Authority.

A detailed analysis of the steps by which appellee acquired title to that portion of its railroad within the borders of the State of Oklahoma, and of the sources of its right and authority to acquire, hold and operate such portion of its system, would but burden the court with unnecessary matter. The amended bill traces the source of title and of authority for each branch or portion of appellee's line, and by analyzing the title to two of such lines as typical of the remainder and by briefly referring to the remaining line the labors of the court will be materially lessened.

The line from Seneca, Missouri, to Sapulpa, Oklahoma, was originally constructed by the Atlantic and Pacific Railroad Company under Act of Congress of July 27th, 1866, granting to that company the right to construct the line, the Act being contained in 14 Statutes at large, page 292. By that Act the Atlantic and Pacific Railroad Company was organized, with grant of perpetual succession and the usual powers of a corporation, the purpose of the formation of the corpora-

tion being to construct a line from Springfield, Missouri, to the Pacific Ocean, through the Indian Territory. The provisions of the Act, at page 292, 14 Statutes at Large, are as follows:

> "Said corporation is hereby authorized and empowered to lay out, locate and construct, furnish, maintain and enjoy, a continuous railroad and telegraph line, with the appurtenances, namely: Beginning at or near the Town of Springfield, in the State of Missouri, thence to the western boundary line of said State, and thence by the most eligible railroad route, as shall be determined by said company, to a point on the Canadian River, thence to the Town of Albuquerque, etc."

It was provided by Section 11 of the Act that the railroad should be a post road and a military road, subject to the use by the United States for postal, military, naval and all other government service. The provisions of the Act were duly accepted by the company, and the railroad constructed from Seneca to Sapulpa.

Later, in 1871 (17 Stat. 19), the company was authorized to issue bonds and secure the payment thereof by mortgage of its property. Pursuant to this power, certain bonds were executed, a mortgage securing their payment was afterward foreclosed, the property sold under foreclosure in December, 1897, and afterwards conveyed to appellee. The rights of the appellee

to own, enjoy, operate and continuously maintain its road between Seneca, Missouri, to Sapulpa, Oklahoma, are fixed by Act of Congress. The country traversed by that road was a territory, the right of Congress to legislate for it was supreme, and the vested rights then acquired by appellee cannot be disturbed by the State as the successor of that territory.

The line from Tulsa Junction, in Indian Territory, through Enid and Avard, in Oklahoma Territory, was constructed by the Arkansas Valley and Western Railway Company, a corporation organized under the laws of the Territory of Oklahoma in 1902. That portion then in Indian Territory was constructed under the provisions of the Enid and Anadarko Act, 32 Statutes at Large, page 43, Section 13 of which provides:

> "That the right to locate, construct, own, equip, operate, use and maintain a railway and telegraph and telephone line or lines into or through the Indian Territory, together with the right to take and condemn lands for right-of-way, depot grounds, terminals and other railway purposes, in or through any lands held by any Indian tribe or nation, person, individual, or municipality, in such territory, or in or through any lands in such territory which have been or may hereafter be allotted in severalty to any individual Indian or other person under any law or treaty, whether the same have or have not been conveyed to the allottee with full power of alienation is hereby granted to any railway company organized under the laws

of the United States or any State or territory which shall comply with this act."

The Arkansas Valley and Western Railway Company complied with all the provisions of the act above referred to, and thereby acquired the right to operate, maintain and use its railway.

That portion of the line in the former Territory of Oklahoma was constructed under the statutes of the territory, which provided authority (I Wilson, Sec. 1022):

> "To take and convey persons or property over their railroad by the power of force of steam, or by animals, or by any mechanical power either within or without this territory, and to receive compensation therefor, and to do all the business incident to railroad corporations."

After the construction of the road in July, 1907, the Arkansas Valley and Western Railway Company sold and conveyed this line to the appellee, the authority for the conveyance being found in an Act of Congress as well as in a Statute of the Territory. The Act of Congress, 33 Statutes at Large 314, provides that:

> "The Arkansas Valley and Western Railway Company may sell and convey to the St. Louis and San Francisco Railroad Company or the Chicago, Rock Island and Pacific Railway Company, all of the railroad of said Arkansas Valley and Western

Railway Company extending from Tulsa Junction, Indian Territory, to Enid and Avard, Oklahoma Territory, together with all the property, rights, privileges and franchises appurtenant or relating thereto, such sale and conveyance to be made upon such terms and conditions as may be agreed upon by the Boards of Directors of the respective companies parties thereto."

The line from Sapulpa to the southern boundary of the State near Denison, Texas, was constructed by the St. Louis, Oklahoma and Southern Railway Company (a corporation organized under the laws of the Territory of Oklahoma), under an Act of Congress entitled "An Act authorizing the St. Louis, Oklahoma and Southern Railway Company to construct and operate a railway through the Indian Territory and Oklahoma Territory, and for other purposes," which became a law March 30, 1896 (29 Stat. at Large, 80), and an act amendatory thereof (30 Stat. at Large, 836).

The line of railroad from Sapulpa, Oklahoma, to Oklahoma City was constructed by St. Louis and Oklahoma City Railroad Company (a corporation organized under the laws of Oklahoma Territory) under an Act of Congress entitled "An Act to authorize St. Louis and Oklahoma City Railroad Company to construct and operate a railway through the Indian and Oklahoma Territories, and for other purposes," which became a law March 18, 1896 (29 Stat. at Large, 69).

The line of railway from Oklahoma City to a point on the southwestern boundary of said State near Quanah, Texas, was constructed by Oklahoma City and Western Railroad Company (a corporation organized under the laws of the Territory of Oklahoma) under authority of the laws then in force in said Territory, and that portion of said line of railway crossing Indian lands and the Indian Territory was constructed under an Act of Congress approved March 2, 1899 (30 Stat. at Large, 990), entitled "An Act to provide for the acquiring of rights-of-way by railroad companies through Indian reservations, Indian lands and Indian allotments, and for other purposes."

The line of railway between Blackwell, Oklahoma, and the southern boundary line of said State near Vernon, Texas, was constructed by Blackwell, Enid and Southwestern Railway Company (a corporation organized under the laws of the Territory of Oklahoma), and that portion of said line of railway crossing Indian allotments was constructed under an Act of Congress approved March 2, 1899 (30 Stat. at Large, 990), being the Act last aforesaid.

Of the line of railway running from the easterly boundary of the State, at a point near Westville, to Muskogee, and from Muskogee to Okmulgee, that portion lying between said easterly boundary and Muskogee was constructed by the Ozark and Cherokee Central Railway Company (a corporation organized under the

laws of the State of Arkansas), the right-of-way therefor being acquired by said Ozark and Cherokee Central Railway Company under an Act of Congress approved March 2, 1899 (30 Stat. at Large, 990), being the Act last above referred to; and that portion of said line extending from Muskogee to Okmulgee was constructed by The Shawnee, Oklahoma and Missouri Coal and Railway Company (a corporation organized under the laws of the Territory of Oklahoma), the right-of-way therefor being acquired under an Act of Congress approved February 28, 1902 (32 Stat. at Large, 43), known as the "Enid and Anadarko Act," and was conveyed to said Ozark and Cherokee Central Railway Company. The entire line of railway described in this paragraph was conveyed to appellee by said Ozark and Cherokee Central Railway Company under an Act of Congress approved April 27, 1904, entitled "An Act permitting the Ozark and Cherokee Central Railway Company and the Arkansas and Western Railway Company, and each or either of them, to sell and convey their railroads and other property in the Indian Territory to St. Louis and San Francisco Railroad Company, or to The Chicago, Rock Island and Pacific Railway Company, and for other purposes."

The line of railway from a point at the boundary line between the State of Arkansas and the State of Oklahoma, near Fort Smith, Arkansas, to the boundary line between the State of Oklahoma and the State of Texas,

near Paris, Texas, was constructed by St. Louis and San Francisco Railway Company (a corporation organized under the laws of the State of Missouri) under authority of an Act of Congress approved August 2, 1882 (22 Stat. at Large, 181), entitled "An Act to provide rights-of-way for railroad and telegraph lines through the Choctaw and Chickasaw Nations of Indians to St. Louis and San Francisco Railway Company, and for other purposes."

The line of railway extending from a point at the boundary between the States of Kansas and Oklahoma, near Baxter, Kansas, into and through Oklahoma, through the City of Miami to Afton, Oklahoma, was constructed by Kansas City, Fort Scott and Memphis Railroad Company under the provisions of an Act of Congress approved March 28, 1896 (29 Stat. at Large, 77), entitled "An Act to authorize Kansas City, Fort Scott and Memphis Railroad Company to extend its line of railroad into the Indian Territory, and for other purposes," and an Act of Congress approved April 6, 1896 (29th Stat. at Large, 87), entitled "An Act authorizing The Arkansas Northwestern Railway Company to construct and operate a railway through the Indian Territory, and for other purposes," and an Act amendatory thereof and supplemental thereto (30 Stat. at Large, 995).

The line of railway entering the State of Oklahoma near Southwest City, Missouri, and extending through

the cities of Dodge and Grove, Oklahoma, to a point near Grand River in said State, was constructed by Arkansas and Oklahoma Railway Company (an Arkansas corporation), and the right-of-way was acquired under an Act of Congress approved March 2, 1899 (30 Stat. at Large, 990), entitled "An Act to provide for the acquiring of rights-of-way by railroad companies through Indian reservations, Indian lands and Indian allotments, and for other purposes."

The line of railway extending from a point at the boundary line between the States of Arkansas and Oklahoma, near Arkinda, Arkansas, to Ardmore, Oklahoma, was constructed by The Arkansas and Choctaw Railway Company (an Arkansas corporation) under authority of an Act of Congress approved June (January) 28, 1899 (30 Stat. at Large, 806), entitled "An Act to authorize The Arkansas and Choctaw Railway Company to construct and operate a railway through the Choctaw and Chicksaw Nations in the Indian Territory, and for other purposes." The corporate name of The Arkansas and Choctaw Railway Company was subsequently changed to St. Louis, San Francisco and New Orleans Railroad Company.

The line of railway from Platter, Oklahoma, to Mead, in said State, was constructed by said St. Louis, San Francisco and New Orleans Railroad Company, under authority of an Act of Congress approved February 28, 1902 (32 Stat. at Large, 43), entitled "An Act to

grant a right-of-way through Oklahoma Territory and the Indian Territory to The Enid and Anadarko Railroad Company, and for other purposes."

The line of railway extending from Scullin, Oklahoma, to Sulphur Springs, in said State, was constructed by The Sulphur Springs Railway Company (a corporation of the Territory of Oklahoma) under authority of the "Enid and Anadarko Act" above referred to.

The line of railway extending from a point south of Arkansas City, Kansas, to Blackwell, Oklahoma, was constructed by Kansas, Oklahoma and Gulf Railway Company (a corporation of the Territory of Oklahoma) under the authority granted by its charter and an Act of Congress approved June 27, 1898 (30 Stat. at Large, 492), entitled "An Act to authorize Kansas, Oklahoma and Gulf Railway Company to construct and operate a railway through the Chilocco Indian Reservation, Territory of Oklahoma, and for other purposes."

The amended bill of complaint definitely traces the various steps by which appelle acquired title to the various lines of railway above enumerated.

The Statute of Oklahoma Territory, passed in 1901, authorized the sale of a railroad, as follows (I Wilson, Sec. 1067):

> "Any railroad company, whether organized under the laws of this territory or of any other State

or territory of the United States, owning any railroad in this territory, and any railroad company organized under the laws of this territory owning a line of railroad either within or without this territory, may sell or lease the whole or any part of its railroad and branches constructed or to be constructed, or any interest therein together with all the property, rights, privileges, and franchises thereto pertaining to any other railroad company organized or existing under the laws of this territory, or of any other state or territory, or of the United States; provided, that no such sale or lease shall be entered into unless the line of railroad so sold or leased shall, when constructed, form a continuous line of railroad with the road of the company purchasing or leasing the same either by direct connection therewith or through an intermediate line or lines, constructed, or to be constructed, which such purchasing or leasing company shall have the right by contract or otherwise when completed to use or operate, and any railroad company of this territory, or of any other state or territory, or of the United States, which shall so purchase or lease a railroad or railroads in this territory shall possess and enjoy, within this territory, all the rights, powers, privileges, and franchises conferred by the laws of this territory upon a railroad corporation formed thereunder."

The Acts of Congress and the Territorial Legislature authorizing the sale of the railroad, necessarily authorized the sale of the necessary incidents thereto,

namely, its rights, privileges and franchises; and the Territorial Act expressly provided that the purchaser might be a foreign corporation, and that by reason of the purchase it should

> "possess and enjoy, within this territory all the rights, powers, privileges, and franchises conferred by the laws of this territory upon a railroad corporation formed thereunder."

By reason of the Acts of Congress, and of the Legislature of Oklahoma Territory, and the purchase by appellee of its lines in Oklahoma thereunder, appellee acquired the right to continue to own and operate the lines involved in this controversy.

This right included the right to transact between points in the now State of Oklahoma all the business incident to the operation of lines of railway.

By way of further explanation, Section 1 of the Schedule of the State Constitution of Oklahoma provides:

> "No existing rights, actions, suits, proceedings, contracts or claims shall be affected by the change in the forms of government, but all shall continue as if no change in the forms of government had taken place. * * *"

The Act of the State of Oklahoma of May 26th, 1908, set out in full at pages 1 to 3, inclusive, of appellant's brief, provided by Section 1 thereof:

"That the domicile of every person, firm or corporation conducting a business in person, by agent, through an office, or otherwise transacting business within the State of Oklahoma, and which has complied with or may comply with the Constitution and laws of the State of Oklahoma, shall be for all purposes deemed and held to be the State of Oklahoma."

Section 2 of the Act provides that the license or charter of a corporation to do business in the State of Oklahoma shall be immediately revoked should the corporation claim or declare in writing, before any court of law or equity within the State, domicile within another state or foreign country. The subsequent sections of the Act provide procedure for revoking the license or charter, and prescribe numerous and excessive fines for thereafter continuing to transact business in the State.

II.

The evident purpose of the Act of 1908 is to prevent foreign corporations doing business in Oklahoma from invoking the jurisdiction of the Federal Courts in that State. If such be the purpose of the Act, it is ineffectual to that end, as held in

Sou. Pac. Co. v. Denton, 146 U. S. 202;
St. L. & S. F. R. R. Co. v. James, 161 U. S. 454, 16 Sup. Ct. Rep. 621;

Southern R. R. Co. v. Allison, 190 U. S. 326, 23 Sup. Ct. Rep. 713;
Buck Stove & Range Co. v. Vickers, 33 Sup. Ct. Rep. 41;
Herndon v. C. R. I. & P. Ry. Co., 218 U. S. 135;
Pullman Co. v. Kansas, 216 U. S. 56;
Ludwig v. Western Union Tel. Co., 216 U. S. 146;
Western Union Tel. Co. v. Kansas, 216 U. S. 1;
Southern Co. v. Greene, 216 U. S. 400;
Text Book Co. v. Pigg, 217 U. S. 91.

That such was the purpose of the Act, and that the parties to this litigation so regarded it at the hearing in the Circuit Court, is indicated by the following language in the opinion of the trial judge (Tr. of Rec., p. 45):

> "Evidently the Act is aimed against the removal of causes from the State Courts to the Federal Court on the ground of diversity of citizenship, because it is based on the assertion in court of a fact necessary to secure such removal. **This is conceded.**"

Of the cases cited above, the James case and the Vickers case involved the construction of an Arkansas statute; the Allison case of a North Carolina statute; the Herndon case of a Missouri statute, and the Denton case of a Texas statute,—all of kindred nature to the Oklahoma Act under consideration.

The Texas statute considered in the Denton case re-

quired foreign corporations, as a prerequisite to the right to transact business in that State, to file with the Secretary of State certain agreements, one of which should contain a provision that if such corporation, when sued in a court of the State, should remove the case to a court of the United States held within the State, on the ground of diversity of citizenship, that thereupon the right to do business in the State should be forfeited. In considering that statute this Court, speaking through Mr. Justice Gray, held:

> "But that statute requiring the corporation, as a condition precedent to obtaining a permit to do business within the State, to surrender a right and privilege secured to it by the Constitution and laws of the United States, was unconstitutional and void, and could give no validity or effect to any agreement or action of the corporation in obedience to its provisions (citing authorities)."
>
> Sou. Pac. Co. v. Denton, 146 U. S. 202, *l. c.* 207.

The case of Herndon v. The Chicago, Rock Island & Pacific Railway Company (218 U. S., 135), considered a statute of the General Assembly of the State of Missouri in 1907, containing a provision, among others, prohibiting foreign or non-resident railway corporations doing business in that State from removing suits brought in the courts of Missouri to any Federal Court, and from instituting suits against citizens of that State

in any Federal Court. The penalty prescribed by the Act for a violation thereof was the revocation by the Secretary of State of the foreign railway company's evidence of authority to do business therein. Mr. Justice Day, delivering the opinion of the Court, stated that in respect of the power of the State to cancel the certificate of authority of the railway company to do business therein, there was need for but little to be said because of the cases decided at the same term involving contentions kindred to the one made in the Missouri case. The references were to Western Union Tel. Co. v. Kansas, 216 U. S. 1; Pullman Co. v. Kansas, 216 U. S. 56; Ludwig v. Western Union Tel. Co., 216 U. S. 146, and Sou. Ry. v. Greene, 216 U. S. 400.

The opinion concludes as follows:

> "Applying the principles announced in those cases, it is evident that the act in controversy cannot stand in view of the provisions of the Constitution of the United States. Moreover, this is not a case where the State has undertaken to prevent the coming of the corporation into its borders for the purpose of carrying on business. The corporation was within the State, complying with its laws, and had acquired, under the sanction of the State, a large amount of property within its borders, and thus had become a person within the State within the meaning of the Constitution, and entitled to its protection. Under the statute in controversy a domestic railroad company might bring an action in the Federal Court, or in a proper

case remove one thereto, without being subject to the forfeiture of its right to do business, or to the imposition of penalties provided for in the act. In all the cases in this Court, discussing the right of the States to exclude foreign corporations and to prevent them from removing cases to the Federal Courts, it has been conceded that while the right to do local business within the State may not have been derived from the Federal Constitution, the right to resort to the Federal Courts is a creation of the Constitution of the United States and the statutes passed in pursuance thereof.

"It is enough now to say that within the principles decided at this term, in the cases cited above, the Act of March 13, 1907, as applied to the complainant railroad company, in view of the admitted facts set out in the bill in this case, is unconstitutional and void. We find no error in the decree granted in the Circuit Court, and the same is affirmed."

The facts in the instant case are, if possible, even stronger than those supporting the conclusion reached by this Court in the Herndon case.

Recognizing that there is no escape from the principle so clearly enunciated in the foregoing opinions, appellant now, in the face of his position below, urges that:

"The purpose of the Act is to enforce the State's visitorial powers over corporations doing business within its borders" (Appellant's Brief, p. 30),

and in support of that interpretation asserts that it was an act pursuant to a command contained in the last sentence of Section 6, Article IX, of the Oklahoma Constitution (pp. 33 and 34 of Appellant's Brief), viz:

> "The Legislature shall pass all necessary laws enforcing by suitable penalties all the provisions in this section."

The section referred to provides that public service corporations organized or doing business in Oklahoma under the laws or authority thereof shall have and maintain a public office, stock, books, etc., within the State, and furnish such information as may be required by law or by order of the Corporation Commission. Annual meetings of directors are also required to be held in the State under that section.

As proof conclusive that the 1908 Act is designed to carry into effect the provisions of Section 6, Article IX, of the Constitution, it is pointed out by appellant that no other statute can be found vitalizing that section, except the later Act of 1908, of like nature.

The conclusions reached by ingenious reasoning, are:

(1) That the Act forfeits only the right to do intrastate business;

(2) That the right is forfeited because of the repudiation of the State's paternity and inspecting power; and

(3) That the right is forfeited only as to such corporations as accept the State Constitution.

(Appellant's Brief, p. 35).

Are these conclusions sound?

Section 1 of the Act declares the domicile of corporations transacting business in Oklahoma "and which have complied with or may comply with the Constitution and laws of the State" to be the State of Oklahoma.

Section 2 provides that foreign corporations in Oklahoma must not assert in writing before any court their citizenship, under penalty of loss of license or charter to do business in the State.

Section 3 requires the judge of any court before whom such assertion is made, to report that fact to the Secretary of State.

Section 4 requires the Secretary of State to thereon immediately declare the license or charter forfeited.

Section 5 contains the penalty provisions.

Section 6 disavows any intention of the Act to confer upon foreign corporations the right of eminent domain in the State; and

Section 7 is the emergency clause, enacted to preserve the public peace and safety.

There is no provision of this highly penal Act indicating the intention to limit its drastic operation to intrastate business. If such were the purpose of the Act, appellant is in no better position to sustain its vality

on that ground than it was to sustain the Act upon its position taken in the Circuit Court. In considering the Act the Court will look to its natural and reasonable effect, disregarding mere forms of expression if necessary so to do in order to determine its proper effect. But there is nothing in the Act which indicates an intention to limit it to intrastate business. The Act clearly indicates a purpose to destroy the right of a foreign corporation to do any kind of business within the State—if it affirms its citizenship. Appellee transacts a large and constantly increasing interstate business in Oklahoma, as well as intrastate business therein. The right to transact each class of business is expressly sought to be revoked by the Act. Appellee "has not since the organization of the State of Oklahoma at any time procured from the Secretary of State of the said State of Oklahoma any license or authority to transact its business in said State, but has continued to carry on its business as a common carrier therein under authority of the laws in force at the time of the organization of said State and of the Constitution of said State of Oklahoma, insofar as it was applicable" (Par. VII, Amended Bill of Complaint; Tran. of Rec., p. 31). The Act strikes at the heart of appellee's interstate business in Oklahoma, and of its intrastate business, and seeks to take away its right to engage in each class and in both classes of such business within the

State. Such being its effect, it matters not what may have been its purpose. The Act is void.

This principle is nowhere more clearly stated than in Western Union Tel. Co. v. Kansas (216 U. S. 1, *l. c.* 33), as follows:

> "It is important here to observe—indeed, the contrary could not be asserted—that the Telegraph Company lawfully entered Kansas, with the consent of both the Territory and State, for the purposes of its business of every kind long before, and was legally there when, the Bush Act was passed. The State concedes its right to continue in such business in Kansas, if it will comply with the statute in question, and pay the fee demanded; and only because of such refusal it seeks the aid of the Court to oust the company from the State, so far as local business is concerned, unless it shall, by paying such fee, contribute—that is the proper word—a given per cent of all its capital for the support of the schools of the State. The State knows that the Telegraph Company, in order to accommodate the general public and make its telegraphic system effective, must do all kinds of telegraphic business. Yet, it seeks to enforce a regulation requiring the company by paying the "fee" in question to assent to its interstate business being burdened and its property outside of Kansas being taxed in order that it may continue to conduct a business concededly beneficial to the public —a right lawfully acquired from the United States when Kansas was a territory, and exercised, consistently with the statutes of the State for many

years after Kansas was admitted as a State of the Union.

"But it is said to be well settled that a State, in the exercise of its reserved powers, may prescribe the **terms** on which a foreign corporation, whatever the nature of its business, may enter and do business within its limits.

"It is true that in many cases the **general** rule has been laid down that a State may, if it chooses to do so, exclude foreign corporations from its limits, or impose such terms and conditions on their doing business in the State as in its judgment may be consistent with the interests of the people. But those were cases in which the particular foreign corporation before the Court was engaged in ordinary business and not directly or regularly in interstate or foreign commerce."

And further, at page 34:

"Whatever may be the extent of the State's authority over intrastate business, was it competent for the State to require that the Telegraph Company—which surely had the right to enter and remain in the State for interstate business—as a **condition** of its right to continue doing domestic business in Kansas should pay, in the form of a fee, a specified per cent **of** its capital stock representing the interests, property and operations of the company not only in Kansas, but throughout the United States and foreign countries? Is such a regulation consistent with the power of Congress to regulate commerce among the States, or with rights, growing out of such commerce and secured

by the Constitution of the United States? Can the State, in this way, relieve its own treasury from the burden of supporting its public schools, and put that burden, in whole or in part, upon the interstate business and property of foreign corporations? Can such a regulation be deemed constitutional any more than one requiring the company, as a condition of its doing intrastate business, that it should surrender its right, for instance, to invoke the protection of the Constitution when it is proposed to deprive it of its property without due process of law, or to deny it the equal protection of the laws? In Lafayette Ins. Co. v. French, *et al.*, 18 How. 404, 407, the Court, speaking by Mr. Justice Curtis, said (p. 407): 'A corporation created by Indiana can transact business in Ohio only with the consent, express or implied, of the latter State, 13 Pet. 519. This consent may be accompanied by such conditions as Ohio may think fit to impose; and these conditions must be deemed valid and effectual by other States, and by this Court, **provided they are not repugnant to the Constitution or laws of the United States.**' "

And further, at pp. 37 and 38:

"We cannot fail to recognize the intimate connection which, at this day, exists between the interstate business done by interstate companies and the local business which, for the convenience of the people, must be done or can generally be better and more economically done by such interstate companies rather than by domestic companies organized to conduct only local business. It is of the

last importance that the freedom of interstate commerce shall not be trammelled or burdened by local regulations which, under the guise of regulating local affairs, really burden rights secured by the Constitution and laws of the United States. While the general right of the States to regulate their strictly domestic affairs is fundamental in our constitutional system and vital to the integrity and permanence of that system, that right must always be exerted in subordination to the granted or enumerated powers of the General Government, and not in hostility to rights secured by the Supreme Law of the Land."

And finally, at pp. 47 and 48:

"The right of the Telegraph Company to continue the transaction of local business in Kansas could not be made to depend upon its submission to a condition prescribed by that State, which was hostile both to the letter and spirit of the Constitution."

Appellee's right to engage in business between local points in the domain now constituting the State of Oklahoma existed when Oklahoma became a State. It was a vested right. If appellee were asking admission to the State of Oklahoma, the State would have the right to impose certain conditions upon its entry therein, but even then it could not require appellee to surrender its right to invoke the jurisdiction of a Court of the United States in a case within such jurisdiction.

If such be true, it certainly cannot deny appellee that Constitutional right when appellee was first in the territory in question. It matters not, therefore, what the purpose of the Act may have been, its effect, if valid, is to deny appellee the right to do both intrastate and interstate business in Oklahoma.

Appellant's first conclusion in support of its construction of the Act, does not appear, therefore, to be well supported.

Appellant's third conclusion that the right is forfeited only as to such corporations as accept the State Constitution, is illogical and unsound. The language of the Act itself clearly speaks its intention. The first two sections use the following language in common: "of every person, firm or corporation conducting a business in person, by agent, through an office, or otherwise transacting business within said (the) State of Oklahoma." But notice the significance of the language following the common language above quoted in each section. In section 1, the language is: "*and which has complied with, or may comply with, the Constitution and laws of the State of Oklahoma.*" Section 2 does not qualify the "every person, firm or corporation," etc., as is done by section 1, manifestly declaring that different subjects are under consideration in the two sections, and section 2 necessarily relates to foreign corporations which have not complied with the Constitution and Laws of Oklahoma. If, as contended

by appellant, the Act applies only to corporations accepting the State Constitution, and if it be admitted that appellee did not secure from the State of Oklahoma a license or authority to transact business in that State, then why the necessity, and where the authority, for the State's representative, its Secretary of State, to attempt to declare the license of appellee "to transact business in the State of Oklahoma forfeited and revoked?"

If the first and third conclusions of appellant (appellan't brief, p. 35) fall, the second must of necessity be carried with them.

If the Legislature of the State of Oklahoma had passed an act declaring that any foreign corporation doing business in Oklahoma which should remove a suit pending in the State Court to the Federal Court on the ground of diverse citizenship, should thereby forfeit its right to do business in the State of Oklahoma, such statute would be void, as has been repeatedly held by this Court. There is no difference in effect or principle between the statute of 1908 and a statute of the character above supposed. An assertion of foreign citizenship would incur the same penalty under either statute. It results, therefore, that the State of Oklahoma, by the Act of 1908, has attempted to accomplish indirectly that which it cannot accomplish directly, and the Court, looking to the substance rather than to the form, should declare this statute void.

Appellee therefore urges that the Act of 1908 is void in that:

(*a*) It violates Section 2, Art. III, of the Constitution of the United States in attempting to defeat the jurisdiction of the Courts of the United States of controversies arising under the Constitution of the United States and laws passed in pursuance thereof, and of controversies between citizens of different states;

(*b*) In that it violates Section 1, Art. XIV, of the Amendments to the Constitution of the United States, which provides that no State shall deny to any person within its jurisdiction the equal protection of the law; and

(*c*) In that it violates Section 1 of the Schedule of the Constitution of Oklahoma, preserving existing rights.....contracts.....and claims.

III.

Appellee having the right to remove the cause from the State Court of Oklahoma to the United States Court in that State, cannot be lawfully excluded from the State for exercising that constitutional right, because:

(a) It has a contract with the United States, created by the various Acts of Congress and the construction and acquisition of its different lines in Oklahoma thereunder, permitting it to remain in the State of Oklahoma for the purpose of operating its said lines therein.

(*b*) It had a contract with the Territory of Oklahoma which is protected by the Constitution of the United States, and by the provision of the Constitution of the State of Oklahoma, preserving all rights previously existing.

(*c*) To exclude appellee from the State would be to impair the obligation of those contracts in violation of Federal and State constitutional guranties.

(*d*) To exclude appellee from the State of Oklahoma would be to destroy its property in that State, aggregating many millions of dollars, and to deprive appellee of its property without due process of law.

U. S. v. Percheman, 7 Pet. 51;
Penn., Etc., v. Wheeling, Etc., Co., 13 How. 518;
Trustees of Vincennes v. State, 14 How. 263;
Kansas Pac. R. R. Co. v. A., T. & S. F. Ry., 112 U. S. 414;
California v. Pacific R. R. Co., 127 U. S. 1;
New Jersey v. Yard, 95 U. S. 104;
St. Paul, Etc., Ry. v. Phelps, 137 U. S. 528;
N. Y. L. E. & W. Ry. v. Penn., 153 U. S. 628;
Reagan v. Farmers L. & T. Co., 154 U. S. 392;
Roberts v. Nor. Pac. Ry., 158 U. S. 1;
Powers v. Detroit & G. H. Ry., 201 U. S. 559;
American Smelting Co. v. Colorado, 204 U. S. 103;
So. Kan. Ry. v. Oklahoma City, 69 Pac. 1050 (Sup. Ct. Ok.);
Smith v. A. T. & S. F. Ry., 64 Fed. 272;
Cessna v. U. S., 169 U. S. 165.

Let us apply the principles laid down in the foregoing authorities to the situation existing in the case at bar. Appellee was in the domain afterwards created into the State of Oklahoma prior to the organization of that State. Its presence there rested upon the authority of Acts of Congress and of Territorial laws of the Indian Territory and the Oklahoma Territory. At the date of the acquisition of its rights, jurisdiction over the Territory of Oklahoma and the Indian Territory was possessed by Congress. Sanctioned by that authority, appellee invested enormous sums of money in acquiring property, extending its lines of railroad, adding to it new lines, and in generally improving and betering its interstate system of railroads. Its right to continue the enjoyment of these privileges was a contract right, evidenced by the instruments of authority under which it entered that domain. When Oklahoma the State sprang into being it was powerless, by legislative Act or otherwise, to divest appellee of these vested rights. The recognition of the inviolability of those rights found expression in Section 1 of the Schedule of the Constitution, as follows:

> "No existing rights, actions, suits, proceedings, contracts or claims shall be affected by the change in the forms of government, but all shall continue as if no change in the forms of government had taken place."

No stronger language could be employed in recognizing, in their original integrity, the rights and contracts asserted in appellee's amended complaint, yet the act of 1908, if upheld, in effect destroys these valid and subsisting contract rights, and authorizes the Secretary of State, upon a certificate, perchance, of a justice of the peace, to not only deny appellee the use and enjoyment of its property valued at many millions of dollars, but practically, by reason of its nature, to destroy it. Adopting the expression of this Court in Kansas Pac. R. Co. v. A., T. & S. F. R. Co. (112 U. S., 414):

> "The admission of Kansas as a State into the Union, and the consequent change of its form of government, in no respect affected the essential character of the corporations or their powers or rights. They must after that change be considered as corporations of the State, as much so as if they had derived their existence from its legislation. As its corporations they are to be treated, so far as may be necessary to enforce contracts or rights of property by or against them, as citizens within the clause of the Constitution declaring the extent of the judicial power of the United States."

Adopting the language of Chief Justice Marshall in the case of the United States v. Percheman, 7 Pet. 51, 86:

> "It may not be unworthy of remark that it is very unusual, even in cases of conquest, for the

conqueror to do more than to displace the sovereign and assume dominion over the country. The modern usage of nations, which has become law, would be violated, that sense of justice and of right which is acknowledged and felt by the whole civilized world would be outraged, if private property should be generally confiscated and private rights annulled. The people change their allegiance; their relation to their ancient sovereign is dissolved; but their relations to each other and their rights of property remain undisturbed. If this this be the modern rule, even in cases of conquest, who can doubt its application to the case of an amicable cession of territory?"

In Cessna v. U. S., 169 U. S. 165, it is held:

"It is the duty of a nation receiving a cession of territory to respect all rights of property as those rights were recognized by the nation making the cession. In other words, it (the United States) took that territory bound to respect all rights of property which the Mexican government respected."

A similar situation was presented in Trustee for Vincennes University v. Indiana, 14 How. 263. The language of the Court is as follows:

"The Act of Congress which organized the Territory of Indiana provided that so much of the ordinance of 1787 for the government of the territory of the United States northwest of the Ohio

River as relates to the general assembly therein and prescribes the powers thereof, shall be in force and operate in the Indiana territory. * * * Under the ordinance the Legislature of the territory was vested with general legislative powers, restricted only by the articles contained in that instrument. It had power to grant an act of incorporation with all the functions necessary to effectuate its objects. There can be no question, therefore, that the corporate powers vested in the plaintiff by the legislature of the territory were legitimately conferred. And these powers were not affected, and could not be affected, by the Constitution of the State. It proivded that 'all rights, contracts and claims, both as respects individuals and bodies corporate, shall continue as if no change had taken place in this government.' "

It will be observed that the language of the Constitution of Indiana in preserving existing rights is almost identical with Section 1 of the Schedule of the Oklahoma Constitution invoked by appellee.

A similar section of the Schedule of the Constitution of Kansas preserving rights existing prior to its statehood was considered in Smith v. A. T. & S. F. Ry. Co., 64 Fed. Rep. 272, and the Court, in construing the section, used the following language:

"This section (Section 1 of the Schedule) saves to bodies corporate all rights and contracts granted by the territorial government, and it is apparent that Section 1 of Article 12 of the Con-

> stitution was intended to limit and define the powers of the State Legislature, and is altogether prospective in its operation. That the powers and privileges given by corporate charters become vested rights and contract obligations, has been decided so often that it is no longer a debatable question (citing many cases)."

The nature of appellee's rights, and of their inviolability from instruction by the Act of the Oklahoma Legislature in question, can be clearly expressed in the language of this Court in Southern Railway Co. v. Greene (216 U. S., 400, *l. c.* 414), quoting the language of Mr. Justice Brewer in Ames v. Union Pacific R. R. Co. (64 Fed., 165, *l. c.* 177), as follows:

> "It must always be borne in mind that property put into railroad transportation is put there permanently. It cannot be withdrawn at the pleasure of the investors. Railroads are not like stages or steamboats, which, if furnishing no profit at one place, and under one prescribed rate of transportation, can be taken elsewhere and put to use at other places and under other circumstances. The railroad must stay, and, as a permanent investment, its value to its owners may not be destroyed. The protection of property implies the protection of its value."

Section 3 of the Act of 1908 requires the Judge of any court in which a declaration of foreign domicile is filed to certify that fact to the Secretary of State.

This may include the Justice of the Peace and County Judge, or a District Judge, in any of the counties in the State of Oklahoma, as appellee is liable to be sued in every county of the State.

It becomes the duty of **any** Judge to make this certificate **when any declaration or claim of domicile is filed in his court.** If appellee is plaintiff in a suit in that State, and in alleging its corporate existence avers that it is a resident of the State of Missouri, the duty of the Judge to make the certificate to the Secretary of State attaches under the act. If appellee is defendant in a suit in which its corporate existence is laid in Missouri, and it admits that fact by its answer, it becomes the duty of the Judge thereupon to make the certificate.

The certificate is *ex parte.* If the foreign corporation learns of it, it is by chance. It is not advised when it is forwarded to the Secretary of State, nor is the Secretary of State required to notify the corporation that the certificate has been received or that its license or charter has been revoked. No hearing is provided for before the court or before the Secretary of State, but the Secretary of State must **immediately** upon receiving the certificate act upon it. The corporation has no opportunity to appear in its defense and no process of law is contemplated or allowed.

This Court, in Holden v. Hardy, 169 U. S. 366, has declared that there are certain fundamental principles

which adhere in the very notion of free government, and these are that no process of law is due process of law unless the party affected has notice of proceedings and a right to be heard and make his defense. In the 1908 Act of Oklahoma neither of these fundamental principles, which are inherent in the very scheme of free government, are recognized and the benefit thereof allowed the offending party. To the same effect are Hagar v. Reclamation Dist., 111 U. S. 701, and Londoner v. Denver, 210 U. S. 373.

It is under such a law that the order in this case was made, the effect of which, if upheld, would practically destroy forty-seven millions of dollars worth of property of appellee.

The Act, therefore, violates Sec. 10 of Art. 1 of the Constitution of the United States, preserving the obligation of contracts, and Sec. 1 of Art. XIV of the Amendments to the Constitution of the United States, and Sec. 16 of Art. II of the Constitution of Oklahoma, which forbid depriving any person of property without due process of law.

IV.

The Oklahoma Act of 1908 is void, because it is in direct interference with, and imposes a direct burden upon, interstate commerce.

Gibbons v. Ogden, 9 Wheat 1;
Pensacola Tel. Co. v. Western Union Tel. Co., 96 U. S. 1;

Western Union Tel. Co. v. Kansas, 216 U. S. 1;
Pullman Company v. Kansas, 216 U. S. 56;
Ludwig v. Western Union Tel. Co., 216 U. S. 146;
Buck Stove & Range Co. v. Vickers, 33 Sup. Ct. Rep. 41;
Heiman v. So. Ry. Co., 203 U. S. 270;
Rearick v. Pennsylvania, 203 U. S. 507;
Atl. Coast Line v. Wharton, 207 U. S. 328;
Darnell *et al.* v. Memphis, 208 U. S. 113.

The amended bill alleges that appellee is engaged in commerce between the States, and that its various lines of railroad in the State of Oklahoma, comprising a mileage of approximately 1,500 miles, form a part of its interstate system of railroad (Tr. of Rec., p. 2). These allegations stand admitted. In addition to these facts is the provision of Section 11 of the Act creating the Atlantic and Pacific Railroad Company, referred to at page —8— of this brief and at page 3 of the transcript of record, that the road built thereunder "shall be a post route and military road, subject to the use of the United States for postal, military, naval, and all other government service."

To deprive appellee of the use of that part of its interstate system operating in Oklahoma in connection with those portions of its system operating through various other states would be a direct interference with its rights and duties as an interstate carrier. The performance of the duties imposed by Section 11 of the

Act creating the Atlantic and Pacific Railroad Company would be rendered impossible should appellee be deprived of the use of its Oklahoma properties.

> "It has frequently been laid down by this Court that the power of Congress over interstate commerce is as absolute as it is over foreign commerce. Would any one pretend that a State Legislature could prohibit a foreign corporation,—an English or a French transportation company, for example,—from coming into its borders and landing goods and passengers at its wharves, and soliciting goods and passengers for a return voyage, without first obtaining a license from some State officer, and filing a sworn statement as to the amount of its capital stock paid? And why not? Evidently because the matter is not within the province of State legislation, but within that of national legislation."

Quoted in Western Union Tel. Co. v. Kansas, 216 U. S. 1, *l. c.* 21, from Crutcher v. Kentucky, 141 U. S. 47. From the same quotation (*l. c.* 21):

> "We have repeatedly decided that a state law is unconstitutional and void which requires a party to take out a license for carrying on interstate commerce, no matter how specious the pretext may be for imposing it."

Quoting further (*l. c.* 22):

> "The decisions are clear to the effect that neither licenses nor indirect taxation of any kind, nor any

> system of State regulation, can be imposed upon interstate any more than upon foreign commerce; and that all acts of legislation producing any such result are, to that extent, unconstitutional and void."

In the Western Union case the Court further says, at page 26:

> "The authorities cited show that this Court has guarded with both diligence and firmness the freedom of interstate commerce against hostile State or local action, as such action has been manifested by regulations operating, in some instances, directly, in others, indirectly, upon the means or instruments employed in that commerce."

Appellee will not further burden the Court with citations of authorities supporting its contention that the Oklahoma Act in question imposes a direct burden upon interstate commerce. The cases are comprehensively collected and discussed of the authorities cited by appellee herein. By way of illustration, it would seem necessarily to follow that,—

If a State, by undertaking to seize an interstate shipment of liquor after it is stored in a depot of the railroad company, but before it is delivered to the consignee, is interfering with interstate commerce (Heiman v. Southern R. R. Co., 203 U. S. 270), it seems apparent that it is an interference with interstate com-

merce to seize the railroad itself and prevent it delivering freight and passengers.

If a State law requiring a person in the State soliciting orders for groceries to be shipped into the State from another State, to pay a license tax, is an unlawful interference with interstate commerce (Rearick v. Pennsylvania, 203 U. S. 507), it is aparent that a law ousting a railroad company over which the groceries were hauled would be an interference with interstate commerce.

If a State law or order of a corporation commission unlawfully requiring an interstate passenger train to stop at a local station, is an unlawful regulation of interstate commerce (Atlantic Coast Line v. Wharton, 207 U. S. 328), then it is apparent that a prohibition against running the entire train at all is an interference with interstate commerce.

If a law exempting the products of the soil of the home State from taxation, and subjecting the like products of the soil of other States to taxation, is an unlawful burden upon interstate commerce (Darnell *et al.* v. Memphis. 208 U. S. 113), it is apparent that to prohibit transportation of these products into the State at all is a greater interference.

The conclusion therefore follows that to uphold the validity of this Act would impose an intolerable and prohibitive burden upon all interstate commerce passing into, through or from the State of Oklahoma, over

the lines of railroad of appellee, in violation of Sec 8, of Art. 1, of the Constitution of the United States, which reserves to Congress the right and power to regulate commerce among the several states. The principle invoked by appellee is directly supported by the authorities cited under this point.

V.

Appellee did not consolidate with the various corporations specified in the amended bill.

The amended bill contains allegations in respect of the acquisition of each line of railroad therein referred to, positively stating the purchase of the properties of such lines of railroad. Appellee and the companies owning such lines of railroad were expressly authorized to acquire on the one hand, and convey on the other, these properties. It is true that Sec. 1358 of Snyder's Compiled Laws of Oklahoma, 1909, contained at pages 69 and 70 of appellant's brief being Section 1028 of Wilson's Statutes of Oklahoma, authorized the consolidation of the stock, franchises and property of railroad companies, whether within or without the Territory of Oklahoma, upon certain conditions and under certain limitations therein contained.

From the existence of that statute however, and the acquisition by appellee of the lines of railroad in the Territory, set out and described in the amended bill, it does not necessarily follow that such lines were ac-

quired under the provisions of that statute and by means of a consolidation. Sec. 1067 of Wilson's Statutes of Oklahoma, which was in effect at the date of the purchase of the lines of railroad described in the amended complaint, and the provisions of the various Acts of Congress also referred to in the amended complaint, afforded full authority for the purchase of those lines of railroad by appellee and for the sale thereof by their then respective owners. Said section 1067 appears in full at page 12 of this brief. The laws of the Territory of Oklahoma authorized either a consolidation or a purchase. In view of the express statement in the amended bill that the latter method was adopted in acquiring appellee's lines of railroad in Oklahoma, there is nothing upon which to base the barren assumption that its Oklahoma properties were acquired by consolidation.

Continuing the subject of the power of the lines described in the amended bill to convey their respective properties to appellees:

(A) The line from Oklahoma City to Quanah, described in subdivision "d" (Tr. of Rec., pp. 10 and 11), was constructed by the Oklahoma City and Western Railroad Company, a corporation organized under the laws of the Territory of Oklahoma, and was sold to appellee under the authority of Sec. 1067, Wilson's Statutes, hereinbefore set out, which expressly gave

to the corporation the power to sell and convey its properties.

(B) The line from Ft. Smith to Paris, described in subdivision "h" (Tr. of Rec., pp. 17 to 20, inclusive), was sold at foreclosure sale.

(C) The lines described in subdivision "i" (Tr. of Rec., pp. 21 to 23, inclusive), from Baxter to Miami and from Miami to Afton, subdivide into two parts. The portion from Baxter to Miami was constructed by Kansas City, Fort Scott and Memphis Railroad Company, an Oklahoma corporation having authority under the Territorial Statute above quoted to sell its line in the Indian Territory. The Kansas City, Fort Scott and Memphis Railroad Company conveyed pursuant to that authority to the Kansas City, Fort Scott and Memphis Railway Company, and the line was leased by the latter company to appellee. The portion of the line from Miami to Afton was constructed by the Arkansas Northwestern Railway Company, an Arkansas corporation (29 Stat. 87), and by it sold to the Gulf, Arkansas and Northwestern Railroad Company, also an Arkansas corporation which in turn conveyed the property to the said Kansas City, Fort Scott and Memphis Railroad Company, which in turn conveyed to said the Kansas City, Fort Scott and Memphis Railway Company, which leased to appellee.

The Arkansas corporation, under the Act of the Arkansas Legislature of March 13, 1889 (Laws of Ark.,

1899, p. 43, Sec. 2), had express power to sell, said section 2 providing:

> "Any railroad company in this State, existing under general or special laws, may sell or lease its road, property and franchise to any other railroad company duly organized and existing under the laws of any other State or territory," etc.

This statute is quoted in the James case, 161 U. S. 545, *supra*.

(D) The line described in subdivision "i" (Tr. of Rec., pp. 23 and 24) as entering the State of Oklahoma on the eastern boundary thereof between the States of Missouri and Oklahoma near Southwest City, Missouri, and extending through the cities of Dodge and Grove, Oklahoma, to a point near Grand River, in said State, was constructed by the Arkansas and Oklahoma Railroad Company, an Arkansas corporation, and the sale thereof to appellee was expressly authorized by the Arkansas statute referred to in (*c*), next preceding.

(E) The line of railroad described in "l" (Tr. of Rec., pp. 26 and 27), extending from the City of Platter, Oklahoma, to the City of Mead, in said State, was constructed by the St. Louis, San Francisco and New Orleans Railroad Company under the provisions of the Enid and Anadarko Act, 32 Statutes at Large, page 43, and conveyed to appellee under the express power to sell given by Act of Congress.

(F) The line of railroad described in subdivision "m" (Tr. of Rec., pp. 27 and 28), extending from Scullin, Oklahoma, to Sulphur Springs, in said State, was constructed by the Sulphur Springs Railway Company and conveyed to appellee under the authority of the Territorial Law of Oklahoma and of said Enid and Anadarko Act.

It will be observed that Sec. 13 of the Enid and Anardarko Act gives full right to sell any railroad constructed under the act; that section 22 thereof permits any other railroad in the Indian Territory to obtain any or all of the benefits and use of the act; and section 23 repeals 30 Statutes at Large 990, under which some of the lines were constructed, and extends the provisions of the act to Oklahoma Territory.

There should be no question, therefore, concerning the validity of the conveyances under which appellee acquired its Oklahoma properties.

VI.

The order attempting to revoke the license of appellee is void.

Omitting the caption, it reads:

> "Having received due and legal notice from J. T. Johnson, Judge of the District Court of Comanche County, that the above-named corporation, defendant St. Louis & San Francisco Railroad Company, has filed a petition for removal to the

United States Court, a certified copy of which is on record in the office of the Secretary of State at the Capitol in the City of Guthrie, in the State of Oklahoma;

"Therefore, I, Leo Meyer, Assistant Secretary of State, and now Acting Secretary of State of the State of Oklahoma, by authority vested in me under Section Four of House Bill No. 131, approved by the Governor of the State of Oklahoma, C. N. Haskell, May 26, 1908, do hereby declare the license of the said St. Louis & San Francisco Railroad Company to transact business in the State of Oklahoma forfeited and revoked.

"In Testimony Whereof, I have set my hand and caused to be affixed the Great Seal of the State" (Tr. of Rec., p. 33).

The Act of 1908 attempts to authorize the Secretary of State to revoke a license solely upon the claim of foreign domicile. The order in question is based solely upon an alleged certificate that appellee "has filed a petition for removal to the United States Circuit Court." There is no statement showing the ground upon which the petition for removal rested. It does not appear that the application for removal was based upon diverse citizenship, and no presumption should be indulged in support of this penal act that the removal was sought upon the ground denounced by the act. The Secretary of State's declaration, therefore, is based upon a reason not specified in the statute, or,

is not based upon the reason specified in the statute, and is therefore void.

Because the order is void, it does not follow that appellee is not injured by its existence. While the order stands, it openly invites prosecution of appellee in every court having jurisdiction over misdemeanor cases, and for that reason alone it should be canceled by mandatory injunction, and the Secretary of State should be restrained from issuing any further order.

By the terms of the Act appellee is guilty of a misdemeanor for every day or part thereof during which it operates its railroad after the declaration of revocation. It is fair to assume that fifteen hundred miles of railroad in one State would enter at least forty counties. Justices of the Peace, as well as County Courts, having jurisdiction in Oklahoma in misdemeanor cases, it follows that appellee would be subject to criminal prosecution in at least one court in each of the forty counties, and possibly in more courts in each county, and subject to the imposition of the numerous fines prescribed by the act.

In order to avoid that multiplicity of litigation, althought the order be held to be void on its face, it should be canceled. If it is not void upon its face, then it is in the nature of a cloud upon appellee's right to operate its property, and therefore is in the nature of a cloud upon appellee's title, and should be canceled for that reason.

VanWyck v. Knevals, 106 U. S. 360.

VII.

The Act is void because in violation of the Eighth Amendment to the Constitution of the United States and Sec. 18, Art. II, of the Constitution of the State of Oklahoma, forbiding the imposition of excessive fines.

Ex parte Young, 209 U. S. 123.

VIII.

Appellee acquired its lines of railroad in the domain now constituting the State of Oklahoma, prior to the birth of that State. Its grantors were authorized by acts of Congress and by the laws of the states of their creation, to construct their respective lines and to convey them to appellee. Appellee was authorized by acts of Congress, by territorial laws and by its charter to acquire and operate such properties. When the State of Oklahoma came into existence it found appellee lawfully operating lines of railroad within its borders under valid and subsisting rights. These rights were not restricted to the transaction of interstate commerce, but extended with equal force to intrastate business. The State of Oklahoma was without authority to divest appellee of the enjoyment of these rights, and was without authority to impose undue burdens upon their enjoyment. The schedule of the Oklahoma Constitution preserving existing rights was not necessary to the enjoyment of the existing rights of appellee when

statehood intervened. The schedule evidences the policy of the State to recognize those existing rights as continuing. The Oklahoma Act of 1908 undertook to authorize the Secretary of State to arbitrarily, by one stroke of the pen, destroy appellee's existing rights, and that without notice, without hearing, without judicial process and without judicial proceedings. If his action be sustained, appellee is deprived of the use and enjoyment of forty-seven millions of dollars worth of property lawfully acquired and operated by it in the now State of Oklahoma. By reason of the character of appellee's property, deprivation of its use amounts in substance to confiscation. The basis of this drastic order is a certificate by a State Judge to the effect that appellee filed in his court a petition for removal to the Federal Court of a cause pending before him. The order attempting to revoke appellee's authority to transact business in Oklahoma does not even recite that the crime denounced by the Act of 1908 was committed by appellee. If the crime consisted in the assertion of citizenship by appellee in a foreign jurisdiction, the *gravamen* of the crime is that appellee stated a truth. If appellee sought to remove a cause to the Federal Court upon the ground of diverse citizenship, it was but exercising a conceded right under the United States Constitution. The order of the Secretary of State must rest upon the Act of 1908 and upon that provision thereof which denounces as criminal the as-

sertion by a foreign corporation of a constitutional right. It seeks to deprive appellee of property and property rights of which it could not be deprived by the grantor of those rights, after they have been accepted, enjoyed and developed, at enormous expense, upon the faith of the inviolability of the rights.

Appellee most earnestly insists that the decree of the trial court be affirmed.

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